WEEKLY UPDATES 22-11-2010 to 28-11-2010

INDEX

	F	PAGE NO.
SI	EBI UPDATES	
1.	Allocation of Government debt & corporate debt investment limits to FIIs	3-6
2.	Circular for Mutual Funds	7-10
RI	BI UPDATES	
1.	Submission of Information to Credit Information Companies	11
2.	Amendment by Prevention of Money Laundering (Amendment) Act, 2009 - Money changing activities	12-13
3.	Amendment by Prevention of Money Laundering (Amendment) Act, 2009	14-15
ΕX	- Cross Border Inward Remittance under Money Transfer Service Scheme KCISE UPDATES	
1.	Application of provisions of section 5A (1A) of the Central Excise Act	16-17
IR	DA	
1.	Guidelines on Variable Insurance Products (VIP)	18-21
C.	ASE LAWS	22 -34

SEBI UPDATES

CIRCULAR

CIR/IMD/FIIC/18 /2010

November 26, 2010

Tο

All Foreign Institutional Investors through their designated Custodians of Securities

Dear Sir/Madam

Sub: Allocation of Government debt & corporate debt investment limits to FIIs

- 1. Government increased the current limit of FII investment in Government Securities by US \$ 5 billion. The incremental limit shall be invested in securities with residual maturity of over five years. Further current limit of FII investment in corporate bonds is also increased by US \$ 5 billion. This incremental limit shall be invested in corporate bonds with residual maturity of over five years issued by companies in the infrastructure sector.
- 2. It has been decided that above incremental limits, shall be allocated to the market participants through bidding process and first come first served process. The unutilized limit from past allocations shall also be allocated to the market participants through bidding process and first come first served process.
- 3. Manner of identification of companies eligible as "Infrastructure"
- 3.1. For incremental limit in corporate debt category investment can be made in corporate bonds of companies which would be classified as infrastructure companies in terms of the External Commercial Borrowings (ECB) Policy.
- 3.2. FIIs shall satisfy themselves before investing in instruments under this incremental limit that issuer is in infrastructure sector in terms of the ECB policy.
- 3.3. Custodians will confirm compliance that their clients investments are in bonds issued for infrastructure companies and have residual maturity of more than 5 years in their report to SEBI.
- 4. **Allocation through bidding process:** The bidding for these limits shall be done on the BSE from 15:30 hrs to 17:30 hrs, on December 02, 2010, in terms of SEBI circular IMD/FII&C/37/2009 dated February 06, 2009, subject to the modifications stated below:-
- 4.1. Government debt long term & Corporate Debt infra long term:
- 4.1.1. In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/37/2009, no single entity shall be allocated more than Rs.2000 cr. of the investment limit. Where a single entity bids on behalf of multiple entities, then such bid would be limited to INR 2000 cr. for every such single entity.

4.1.2. In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII &C/37/2009, the minimum amount which can be bid for shall be Rs.200 cr. and the minimum tick size shall be Rs.100 cr.

4.2. Corporate Debt – Old limit:

- 4.2.1. In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/37/2009, no single entity shall be allocated more than Rs.600 cr. of the investment limit. Where a single entity bids on behalf of multiple entities, then such bid would be limited to INR 600 cr. for every such single entity.
- 4.2.2. In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII &C/37/2009, the minimum amount which can be bid for shall be Rs.100 cr. and the minimum tick size shall be Rs.50 cr.
- 5. Allocation through first come first serve process (FCFS): In terms of SEBI circular dated January 31, 2008, the Government debt long term & corporate debt (for both old and incremental) limits shall be allocated in the FCFS basis subject to the following conditions:-
- 5.1. The remaining amount in government debt & corporate debt after bidding process shall be allocated among the FIIs/sub-accounts on a FCFS basis.
- 5.2. The debt requests in this regard shall be forwarded to the dedicated email id fii_debtrequests@sebi.gov.in. The window for FCFS process shall open at 08:30 AM IST, December 02, 2010.
- 5.3. Maximum limit per request under this process shall be INR 49 cr.
- 5.4. A non-utilisation charge would be levied at average successful bid premium (in respective bidding process) for non-utilized part from the allocation in first come first serve.

6. Time period for utilisation of debt limit

- 6.1. In partial amendment to clause 4 of the aforesaid circular IMD/FII & C/37/2009, time period for utilization of the corporate debt limits allocated through bidding process (for both old and long term infra limit) shall be 90 days. However, time period for utilization of the Government debt limits allocated through bidding process shall remain 45 days.
- 6.2. Further, please refer to paragraph 2 of circular no. IMD/FII&C/35/2008 dated November 06, 2008, wherein it has been stated that debt limit allocated through first come first serve process shall be utilized within 11 working days from the date of the allocation. It has now been decided that the time period for utilization of the corporate debt limits allocated through first come first serve process (for both old and incremental limit) shall be 22 working days. Time period for utilization of the Government debt limits allocated through first come first serve process shall remains unchanged at 11 working days.

- 6.3. Please refer to paragraph 2 of circular no. IMD/FII&C/30/2008 dated July 04, 2008, wherein it has been stated that a period of upto five business days shall be allowed for replacement of the disposed off/ matured debt instrument/ position. It has now been decided that time period for replacement of the disposed off/ matured debt instrument/ position for corporate debt shall be 15 working day. 'Working days' would mean working days of SEBI. The above mentioned circulars stand amended to that extent. Period of replacement of the disposed off/ matured debt instrument/ position for Government debt will continue to be at 5 working days.
- 6.4. Utilisation period is summarized in the below table:

ALLOCATION	EXISTING UTILISATION PERIOD	REVISED UTILISATION PERIOD			
WINDOW		G-SEC		CORPORATE DEBT	
		OLD	LONG TERM	OLD	INFRA 5 YEARS
FCFS (working Day)	11	11	11	22	22
Bidding (Calendar days)	45	45	45	90	90
Re-purchase (working Day)	5	5	5	15	15

- 6.5. Custodians shall monitor the investments made under the individual limits and submit a report to SEBI on a fortnightly basis.
- 7. **Multiple bid order from single entity:** It has been decided that in the bidding process a bidder shall be allowed to bid for more than one entity provided
- 7.1. It provides due authorization to act in that capacity by those entities
- 7.2. It provides the stock exchanges, the allocation of the limits interse for the entities it has bid for to exchange with 15 minutes of close of bidding session.
- 8. FII investment into "to be listed" debt securities:
- 8.1. Please refer to point 3 of circular no. IMD/FII/20/2006 dated April 05, 2006, wherein it has been stated that FII investments shall be restricted to only listed debt securities of companies. It has now been decided that FIIs are allowed to invest in primary debt issues only if listing is committed to be done within fifteen days.
- 8.2. In the circumstances that the debt issue cannot be listed within 15 days of issue for any reasons whatsoever, then the holding of FIIs/sub-accounts if disposed off shall be sold off only to domestic participants/investors until the securities are listed.

A copy of this circular is available at the web page "F.I.I." on our website www.sebi.gov.in. The custodians are requested to bring the contents of this circular to the notice of their FII clients.

Yours faithfully,

Jeevan Sonparote General Manager +91-22-26449110 jeevans@sebi.gov.in

SEBI UPDATES

CIRCULAR

Cir / IMD / DF / 19 / 2010

November 26, 2010

All Mutual Funds/Asset Management Companies (AMCs)/ Trustee Companies/Boards of Trustees *of* Mutual Funds

Dear Sir/Madam,

Sub: Circular for Mutual Funds

A. Interval Schemes/Plans

- 1. It has been noticed that certain Scheme Information Documents provide that the subscription to the scheme can be made during a specific period (known as specified transaction period) and the repurchase of units is permitted on all business days subject to applicable loads (except for redemption during specified transaction period when no load is charged). These schemes are generally referred to as 'interval schemes'.
- 2. As per the current regulation, there is no restriction on tenure of securities in which interval scheme can invest. This read with daily redemption option may result in asset liability mismatch. In line with the changes made in the SEBI (Mutual Funds) Regulations, 1996 regarding close ended schemes, it has been decided that, henceforth, for all interval schemes/plans
- i. The units shall be mandatorily listed.
- ii. No redemption/repurchase of units shall be allowed except during the specified transaction period (the period during which both subscription and redemption may be made to and from the scheme). The specified transaction period shall be of minimum 2 working days.
- iii. Minimum duration of an interval period in an interval scheme/plan shall be 15 days.
- **iv.** Investments shall be permitted only in such securities which mature on or before the opening of the immediately following specified transaction period.

Explanation:

In case of securities with put and call options the residual time for exercising the put option of the securities shall not be beyond the opening of the immediately following transaction period.

3. Applicability:

The AMC shall ensure compliance with the requirements mentioned in Clause 2 from the date of next specified transaction period or April 1, 2011 whichever is later. Schemes for which observations (final) under Regulation 29 of SEBI (Mutual Funds) Regulations, 1996 have been issued but are yet to be launched would be required to carry out the changes in Scheme Information Document and file the same with SEBI before the launch.

B. Uniform cut-off timings for applicability of Net Asset Value (NAV) of Mutual Fund scheme(s)/plan(s).

1. As per the current regulations, in respect of purchase of units in liquid schemes, irrespective of the time of receipt of application, where the funds are not available for utilization before the cut-off time, the closing NAV of the day immediately preceding the day on which the funds are available for utilization shall be applicable;

In respect of purchase of units in Income/ Debt oriented schemes (other than liquid fund schemes and plans) with amount equal to or more than Rs. 1 crore, irrespective of the time of receipt of application, the closing NAV of the day on which the funds are available for utilization shall be applicable.

It is observed that mutual funds are deploying funds without receiving clear funds in the scheme account. As a matter of good practice and to avoid systemic risk, it has been decided to modify certain provisions of the SEBI Circular No. SEBI/IMD/CIR No.11/78450/06 dated October 11, 2006 as per the following details.

- 2. With regard to Clause 5(1) of SEBI Circular No. SEBI/IMD/CIR No.11/78450/06 dated October 11, 2006 which specifies cut-off timings for liquid fund schemes and plans, it is clarified that for determining the applicable NAV
- a. The following cut-off timings shall be observed by a mutual fund in respect of purchase of units in liquid fund schemes and their plans, and the following NAVs shall be applied for such purchase:
- i. where the application is received upto 2.00 p.m. on a day and funds are available for utilization before the cut-off time without availing any credit facility, whether, intra-day or otherwise the closing NAV of the day immediately preceding the day of receipt of application;
- ii. where the application is received after 2.00 p.m. on a day and funds are available for utilization on the same day without availing any credit facility, whether, intra-day or otherwise the closing NAV of the day immediately preceding the next business day; and
- iii. irrespective of the time of receipt of application, where the funds are not available for utilization before the cut-off time without availing any credit facility, whether, intra-day or otherwise the closing NAV of the day immediately preceding the day on which the funds are available for utilization.

- b. For allotment of units in respect of purchase in liquid schemes, it shall be ensured that:
- i. Application is received before the applicable cut-off time.
- ii. Funds for the entire amount of subscription/purchase as per the application are credited to the bank account of the respective liquid schemes before the cut-off time.
- iii. The funds are available for utilization before the cut-off time without availing any credit facility whether intra-day or otherwise, by the respective liquid schemes.
- c. For allotment of units in respect of switch-in to liquid schemes from other schemes, it shall be ensured that:
- i. Application for switch-in is received before the applicable cut-off time.
- ii. Funds for the entire amount of subscription/purchase as per the switch-in request are credited to the bank account of the respective switch-in liquid schemes before the cut-off time.
- iii. The funds are available for utilization before the cut-off time without availing any credit facility whether intra-day or otherwise, by the respective switch-in schemes.
- 3. With regard to Clause 6(2A) of SEBI Circular No. SEBI/IMD/CIR No. 11/142521/08 dated October 24, 2008 which specifies the applicability of NAV for income/debt oriented mutual fund schemes/plans other than liquid schemes, it is clarified that for determining the applicable NAV
- a. For allotment of units in respect of purchase in income/debt oriented mutual fund schemes/plans other than liquid schemes, it shall be ensured that:
- i. Application is received before the applicable cut-off time.
- ii. Funds for the entire amount of subscription/purchase as per the application are credited to the bank account of the respective schemes before the cutoff time.
- iii. The funds are available for utilization before the cut-off time without availing any credit facility whether intra-day or otherwise, by the respective scheme.
- b. For allotment of units in respect of switch-in to income/debt oriented mutual fund schemes/plans other than liquid schemes from other schemes, it shall be ensured that:
- i. Application for switch-in is received before the applicable cut-off time.
- ii. Funds for the entire amount of subscription/purchase as per the switch-in request are credited to the bank account of the respective switch-in income/debt oriented mutual fund schemes/plans before the cut-off time.

iii. The funds are available for utilization before the cut-off time without availing any credit facility whether intra-day or otherwise, by the respective switch-in income/debt oriented mutual fund schemes/plans.

C. Encumbrance of the scheme property

Fourth Schedule of Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 provides that the AMC shall not acquire any of the assets out of the scheme property which involves the assumption of any liability which is unlimited or which may result in encumbrance of the scheme property in any way. AMC's are advised to strictly adhere to the said provision.

This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully
Asha Shetty
Deputy General Manager,
Investment Management Department
Telephone -022-26449258
Email: ashas@sebi.gov.in

RBI UPDATES

Circular

RBI/2010-11/286 DNBS(PD-SC/RC).CC. No. 23 /26.03.001/2010-11

November 25, 2010

All registered Securitisation Companies/Reconstruction Companies

Dear Sirs,

Submission of information to Credit Information Companies

In terms of Section 2(f) (ii) of the Credit Information Companies (Regulation) Act, 2005, Securitisation companies/reconstruction companies (SC/RCs) are also covered under the definition of "credit institution". Further, the Credit Information Companies (Regulation) Act provides that **every credit institution in existence shall become a member of at least one credit information company**. Thus all SC/RCs being 'credit institutions' are required to become a member of at least one credit information company as per the statute.

- 2. In this regard, in terms of sub-sections (1) and (2) of Section 17 of the Credit Information Companies (Regulation) Act, 2005, a **Credit Information Company may require its members** to furnish credit information as it may deem necessary in accordance with the provisions of the Act and every such credit institution has to provide the required information to that **Credit Information Company**. Further, in terms of Regulation 10 (a) (ii) of the Credit Information Companies Regulations, 2006, every credit institution shall:
- (a) keep the credit information maintained by it updated, regularly on a monthly basis or at such shorter intervals as may be mutually agreed upon between the SC/RC and the Credit Information Company; and
- (b) take all such steps which may be necessary to ensure that the credit information furnished by it, is up-to-date, accurate and complete.
- 3. It is therefore, advised that SC/RCs on becoming member /members of any Credit Information Company / Companies may provide them the current data in the existing format if not already furnished by the banks/Fls from whom SC/RCs acquire the assets. Care should be taken to ensure that accurate data / history regarding borrowers is given to Credit Information Companies.

Yours faithfully,

(Uma Subramaniam) Chief General Manager In-Charge

RBI UPDATES

Circular

RBI/2010-11/287 A.P. (DIR Series) Circular No.18 A.P. (FL/RL Series) Circular No.01

November 25, 2010

To.

All Authorized Persons

Madam/Sir,

Know Your Customer (KYC) norms/ Anti-Money Laundering (AML) standards/ Combating the Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009- Money changing activities

Attention of the Authorized persons is invited to the A.P. (DIR Series) Circular No. 17 [A.P.(FL/RL Series) Circular No. 04] dated November 27, 2009 on Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/ Combating the Financing of Terrorism (CFT)/Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by the Prevention of Money Laundering (Amendment) Act, 2009 in respect of money changing activities.

Suspicion of money laundering/terrorist financing

2. With a view to preventing the system of purchase and/ or sale of foreign currency notes/ Travellers' Cheques by Authorised Persons (APs) from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing, it is clarified that whenever there is suspicion of money laundering or terrorist financing or when other factors give rise to a belief that the customer does not, in fact, pose a low risk, APs should carry out full scale customer due diligence (CDD) before undertaking any money changing transaction.

Filing of STR

3. In terms of the instructions contained in Para 4.3 (iv) of the circular dated November 27, 2009 referred to above, APs should not undertake any transaction where they are unable to apply appropriate customer due diligence measures. Similarly, in terms of instructions contained in Para 4.4 (g) of the circular dated November 27, 2009, relationship with a business entity/ ies like a company/ firm / trusts and foundations should be established only after conducting due diligence by obtaining and verifying prescribed suitable documents. When a business relationship is already in existence and it is not possible to perform customer due diligence on the customer in respect of the business relationship, APs should terminate the business relationship and make a Suspicious Transaction Report to FIU-IND. It is clarified that in the circumstances when an AP believes that it would no longer be satisfied that it knows the true identity of the customer (individual/ business entity), the AP should also file an STR with FIU-IND.

Politically Exposed Persons (PEPs)

4. In terms of instructions contained in Para 4.5 (iii) of the circular dated November 27, 2009 referred to above, the decision to undertake a transaction with a PEP should be taken at a senior level which should be clearly spelt out in the Customer Acceptance Policy. APs should also subject such transactions to enhanced monitoring on an ongoing basis. Similarly, where a customer subsequently becomes a PEP after a business relationship has already been established, enhanced CDD should be performed on such customers and decision to continue business relationship with the PEP should be taken at a sufficiently senior level. It is clarified that the instructions contained in paragraph 4.5 (iii) of the circular dated November 27, 2009 referred to above are also applicable to individual transactions/ business relationship where a PEP is the ultimate beneficial owner. Further, in regard to individual transactions/ business relationship in case of PEPs, it is reiterated that APs should have appropriate ongoing risk management procedures for identifying and applying enhanced CDD to PEPs, customers who are family members or close relatives of PEPs and individual transactions/ business relationship of which a PEP is the ultimate beneficial owner.

Principal Officer

- 5. With reference to Para 4.12 of the circular dated November 27, 2009 referred to above, regarding appointment and responsibility of the Principal Officer, it is clarified that the role and responsibilities of the Principal Officer should include overseeing and ensuring overall compliance with regulatory guidelines on KYC/ AML/ CFT issued from time to time and obligations under the Prevention of Money Laundering Act, 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009, rules and regulations made there under, as amended from time to time.
- 6. These guidelines would also be applicable mutatis mutandis to all agents/ franchisees of Authorised Persons and it will be the sole responsibility of the franchisers to ensure that their agents/ franchisees also adhere to these guidelines.
- 7. Authorised Persons should bring the contents of this circular to the notice of their constituents concerned.
- 8. The directions contained in this Circular are issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and also under the **Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005, as amended from time to time. Non-compliance with the guidelines would attract penal provisions of the Acts concerned or Rules made there under.**

Yours faithfully,

(Salim Gangadharan) Chief General Manager-in-Charge

RBI UPDATES

Circular

RBI/2010-11/288 A.P. (DIR Series) Circular No.19 A.P. (FL Series) Circular No. 02

November 25, 2010

All Authorised Persons, who are Indian Agents under the Money Transfer Service Scheme.

Madam/Sir,

Know Your Customer (KYC) norms/ Anti-Money Laundering (AML) standards/ Combating the Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009- Cross Border Inward Remittance under Money Transfer Service Scheme

Attention of all the Authorised Persons, who are Indian Agents [APs (Indian Agents)] under the Money Transfer Service Scheme (MTSS) is invited to the A.P. (DIR Series) Circular No. 18 [A.P. (FL/ RL Series) Circular No. 05] dated November 27, 2009 on Know Your Customer (KYC) norms/ Anti-Money Laundering (AML) standards/ Combating the Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by the Prevention of Money Laundering (Amendment) Act, 2009 in respect of cross border inward remittances under the Money Transfer Service Scheme (MTSS).

Suspicion of money laundering/terrorist financing

2. With a view to preventing the system of cross border inward money transfer into India from all over the world under the MTSS from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities, it is clarified that whenever there is suspicion of money laundering or terrorist financing or when other factors give rise to a belief that the customer does not, in fact, pose a low risk, APs (Indian Agents) should carry out full scale customer due diligence (CDD) before making payment of any remittance.

Filing of STR

3. In terms of the instructions contained in Para 5.3 (iv) of the circular dated November 27, 2009 referred to above, AP (Indian Agent) should not make payment of any remittance where it is unable to verify the identity and/ or obtain required documents. It is clarified that in the circumstances when an AP (Indian Agent) believes that it would no longer be satisfied that it knows the true identity of the customer, the AP (Indian Agent) should also file an STR with FIU-IND.

Politically Exposed Persons (PEPs)

4. In terms of the instructions contained in Para 5.5 of the circular dated November 27, 2009 referred to above, the decision to undertake a transaction with a PEP should be taken at a senior level which should be clearly spelt out in the Customer Acceptance Policy. APs (Indian Agents) should also subject such transactions to enhanced monitoring on an ongoing basis. The above norms may also be applied to customers who become PEPs subsequent to establishment of the business relationship. It is clarified that the instructions contained in paragraph 5.5 of the circular are also applicable to transactions where a PEP is the ultimate beneficial owner. Further, in regard to transactions in case of PEPs, it is reiterated that APs (Indian Agents) should have appropriate ongoing risk management procedures for identifying and applying enhanced CDD to PEPs, customers who are family members or close relatives of PEPs and transactions of which a PEP is the ultimate beneficial owner.

Principal Officer

- 5. With reference to the Para 5.11 of the circular dated November 27, 2009 referred to above, regarding appointment and responsibility of the Principal Officer, it is clarified that the role and responsibilities of the Principal Officer should include overseeing and ensuring overall compliance with regulatory guidelines on KYC/ AML/ CFT issued from time to time and obligations under the Prevention of Money Laundering Act, 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009, rules and regulations made there under, as amended from time to time.
- 6. These guidelines would also be applicable mutatis mutandis to all Sub-agents of the Indian Agents under MTSS and it will be the sole responsibility of the APs (Indian Agents) to ensure that their Sub-agents also adhere to these guidelines.
- 7. Authorised Persons (Indian Agents) should bring the contents of this circular to the notice of their constituents concerned.
- 8. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and also under the Prevention of Money Laundering Act, (PMLA), 2002 as amended by Prevention of Money Laundering (Amendment) Act, 2009 and Prevention of Money-Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005, as amended from time to time. Non-compliance with the guidelines would attract penal provisions of the Acts concerned or Rules made there under.

Yours faithfully,

(Salim Gangadharan) Chief General Manager-in-Charge

EXCISE UPDATES

Circular No. 937/27/2010 - CX

F.No.52/1/2009- CX.1 Pt
Ministry of Finance
Department of Revenue
Central Board of Excise of Revenue & Customs
North Block, New Delhi

Dated the 26th November, 2010

To

Director Generals (All)
Chief Commissioners of Central Excise including LTU (All)
Commissioners of Central Excise including LTU (All)

Sir,

Sub: Application of provisions of section 5A (1A) of the Central Excise Act

References had been received from the field formations as well as trade to clarify the ambiguity arising out of simultaneous prevalence of two exemption notifications namely 29/2004-CE dated 9.7.2004 as amended by notification No. 58/2008-CE dated 7.12.2008 and another notification 59/2008-CE dated 7.12.2008. The period of dispute is from 7.12.2008 to 6.7.2009. During this period while one notification No. 29/2004-CE as amended granted full exemption to certain items of Textile Sector without any condition, the second notification 59/2008-CE prescribed a concessional rate of duty of 4% on these items, with the benefit of Cenvat Credit.

- 2. The dispute was with regard to whether an assessee can avail the benefit of either of the above said two notifications whichever is beneficial to him or he is bound to avail the unconditional exemption under notification No. 20/2004 CE, as amended, during the period under dispute in terms of the provisions of section 5A(1A) of the Central Excise Act, 1944.
- 3. The matter was examined in the Board. As a substantial question of law was involved, the matter was referred to the Law Ministry for its opinion. The Ministry of Law has opined that the language used in said section 5A(1A) is unambiguous and principles of harmonious construction cannot be applied in the instant case in view of specific provision under sub-section (1A) of section 5A of the Central Excise Act. The Law Ministry has accordingly concluded that in view of the specific bar provided under sub-section (1A) of section 5A of the Central Excise Act, the manufacturer cannot opt to pay the duty under notification 59/2008-CE dated 7.12.2008 and he can not avail the Cenvat Credit of the duty paid on inputs.
- 4. The aforesaid opinion of Law Ministry has been accepted by the Board. Pending issues, if any, may be decided accordingly.
- 5. Trade may be informed suitably.

- 6. The receipt of this circular may be acknowledged.
- 7. Hindi version would follow in due course.

Yours faithfully,

(Madan Mohan) Under Secretary (CX1

IRDA

CEOs of All Life Insurance Companies

Ref:IRDA/ACT/CIR/VIP/187/11/2010

Date:23-11-2010

Guidelines on Variable Insurance Products (VIP)

To CEOs of All Life Insurance Companies

The structure of insurance policies evolves over time to provide policy holders, a stream of long term benefits. Generally these changes are in response to changes in the overall financial sector as also to be in line with current consumer expectations. Over the past decade, non-linked life insurance products have been recreated to address some of their anachronistic features such as, lack of transparency, high initial business strain etc. Most importantly, these design innovations in Life insurance sector, provide consumers greater flexibility to change the mortality and savings proportions of their insurance policies as individual life stage needs changes. These new variations of traditional products are variously termed 'Universal Life' or 'Variable Life' policies and these products have gained a substantial share in the market, particularly in the developed markets where they first evolved. It is clear that their popularity is caused by the greater flexibility, transparency and lower business strain, as compared to non-linked conventional type products which hence provide for better returns. A few such products have been recently introduced in India too.

After a careful study of the design of such products in several countries and having regard to the specificities of the insurance industry in India, in particular the concerns of market conduct, consumer awareness and approaches to policyholder protection, the IRDA had circulated an exposure draft of the approach proposed to be adopted in the regulation of such products. Taking into consideration the response and comments received and to address the relevant concerns, the Authority issues the following guidelines:

- 1. Universal Life products shall be known as Variable Insurance Products (VIP).
- 2. All VIP shall only be offered under non-unit linked platform and shall not be permitted on unit linked platform.
- 3. VIP shall be defined as a Non-Linked Life Insurance product that provides:
- a. A Death benefit equal to the guaranteed sum assured plus the balance in the policy account.
- b. A Maturity benefit equal to the balance in the policy account together with a terminal bonus, if any, as applicable
- 4. Every policy shall have a corresponding policy account whose balance shall depict the accrual to the policyholder. The policy account shall be credited with premium net of all charges. The guaranteed rate and bonus shall be applicable to the balance of the policy account. The statement of policy account shall be sent to the policyholder at least once a year.
- 5. VIP shall only provide mortality cover, no other contingency shall be covered other than death. The sum assured shall at least be ten times annualized premium.
- 6. The policyholder shall be offered flexibility of changing the sum assured during the currency of

the contract subject to a minimum sum assured as approved in the F&U clearance accorded by the Authority. When the sum assured is changed, such change will be effective from the immediate next policy anniversary.

- 7. No group insurance contract is allowed for these products at this stage.
- 8. These products shall have the following features:
 - i. Benefit payable on death: The benefit payable on death shall be the sum assured chosen by the policyholder together with the balance in the policy account as on the date of death.
 - ii. Benefit payable on Maturity: The benefit payable on maturity shall be the balance of money in the policy account plus the terminal bonus (if any), as applicable.
 - iii. Only level regular premiums will be permitted in these policies. Single premium or Limited premiums shall not be allowed.
 - iv. The premium shall be shown separately as risk premium, charges, commission and policy components.
 - v. The minimum policy and premium payment term shall be five years.
 - vi. All Variable insurance products shall have a lock-in period of three years.
- 9. All the VIP shall prescribe a surrender value which shall not be more than as specified in the Table 1 below:

Table - 1

Table – I				
Policy Year	Minimum Surrender benefit payable			
During 1 st / 2 nd / 3 rd year	The balance in the policy account will be frozen on the date of surrender and this balance shall be payable at the end of lock-in period without debiting any further expenses or crediting any further interest.			
During 4 th and 5 th year	If the surrender takes place during the 4 th or 5 th policy year, the policyholder is eligible for 98 per cent of the policy balance available in his or her account. This amount is payable immediately on surrender.			
After 5 th year	The amount available in the policy account as on the date of surrender and is payable immediately on surrender.			

- 10. Top-up premium: Top-up premium is allowed throughout the term. At any point of time during the currency of the contract, the total top-up premium paid shall not exceed the sum total of regular premiums paid at that point of time.
- 11. Partial Withdrawal: No partial withdrawal shall be allowed under this product. However a loan amount of not more than 60% of the balance may be extended at a rate of interest as approved in the F&U clearance accorded by the Authority.
- 12. All VIP shall be offered as traditional products either as participating or non-participating, as per the current practice.
- 13. Non-participating VIP: The product must have a guaranteed interest rate, referred as minimum floor rate. This minimum floor rate, as approved in the File and Use clearance accorded by the Authority, shall be guaranteed for the whole term and shall be calculated on the policy account. The insurer may also declare an additional investment return at periodical intervals.
- 14. Participating VIP: The product must have a guaranteed interest rate applied on policy account. This guaranteed investment return will be declared at the start of the policy term and will

continue throughout the term of that policy. The company shall also declare bonus rates at the end of every financial year in accordance with section 49 of the Insurance Act, 1938 and other regulations and directives of IRDA as applicable to participating (also known as 'with profits') products.

- 15. (a) For all modes of premium payment (viz., annual, half-yearly, quarterly and monthly) the additional interest rate (for non-par) or the bonus (for par) shall be declared once a year (immediately after the annual actuarial valuation i.e., as on March 31st of each year) which is to be credited to the policy account in the manner as specified in clause 4; (b). the guaranteed rate shall be credited to the policy account at least on quarterly basis.
- 16. The insurer shall keep a separate account of all receipts and payments in respect of this product. The valuation of assets and liabilities shall be in accordance with the IRDA (Assets, Liabilities and Solvency Margin) Regulations, 2000.
- 17. Premiums: The premium shall comprise the sum of the following four components:

The first component shall be termed as the Risk Premium which shall be used to provide the guaranteed sum assured payable on death.

The second component shall be the expense component;

The third component shall be the commission rates offered under the product;

The fourth component shall be termed as the policy premium.

18. Expense component and commission component together shall not exceed at any point of time the maximum given in Table 2:

Table: 2

Table: 2					
Year	Maximum expense (including commission)				
1 st year	27.5% of the first year premium				
2 nd and 3 rd year	7.5% of second and third year premium				
4th year onwards	5% of the 4 th year and subsequent premium				
On Top-up premiums	3% of the top-up premium				

- 19. Riders: There shall not be any rider attached to this product.
- 20. If due premiums are not paid within the grace period, the policy shall become a paid -up policy. This due date of first unpaid premium shall be known as date of paid up policy. The policyholder may revive the policy within 12 months from the date of first unpaid premium. During this revival period, the life cover ceases.
- 21. Furnishing Statements of Accounts: Policy account statement shall be issued at the end of each financial year to the policyholder giving the breakup of the closing balance, premium received, deductions towards mortality, commission and expenses, minimum floor interest earned, additional interest earned or bonus declared and added and closing balance in the manner prescribed in the Annexure attached to this circular.
- 22. Disclosure: The products shall not be sold as universal life or unit-linked products. The promotion architecture and the key features document to be sent to all prospective policyholders shall disclose, apart from whatever else may be specified from time to time, the following:

- (i) Guaranteed minimum floor rate
- (ii) Sum assured
- (iii) Premium paying term
- (iv) A clear disclosure of the premium showing the four components separately
- (v) Lock in period and the treatment of monies during lock in period in the event of surrender
- (vi) Interest rate on loan, if applicable
- (vii) A declaration that this is a non linked insurance product
- 23. All existing individual products which have a separate and identified savings component shall be refilled with the Authority in accordance with these guidelines and fresh approval is to be obtained.

(R. Kannan) Member (Actuary)

HIGH COURTS

Bad debt -- Amount written off in accounts--Assessing Officer has power to enquire into genuineness of claim--Income-tax 1961. Act. SS. 36(1)(vii), 143-- *CIT* v. Kohli Brothers Color Lab P. Ltd. (All) . . . 80

Business expenditure -- Deduction only on payment-actual "Any sum payable by way of tax"--**Presupposes** liability to tax on part of assessee towards State--Electricity **Board** collecting electricity duty from customers as agent of State--Section 43B not applicable--Incometax Act, 1961, s. 43B--Kerala State Electricity Board v. Deputy CIT (Ker) . . . 91

Deduction of tax at source --Non-resident--Scope of section 195--Transfer of share in non-resident company from one non-resident to another non-resident--That

share through indirect holdings and agreements representing controlling interest in Indian business--Actual transaction of disinvestment interest in mobile telecommunication services in India--**Rights** and entitlements constituted capital assets--Source of income in India--Liability to deduct tax at source from income arising from transaction--Incometax Act, 1961, ss. 9, 195--2(14), 5,Vodafone International Holdings B. V. v. Union of India (Bom) . . . 126

Exemption Educational institution--Approval--Imposition condition that 75 per cent. of income be applied for educational purposes in India--Proper--Assessee to be given reasonable time for fulfilling conditions--Incometax Act, 1961. s. 10(23C)(vi)--American Hotel and Lodaina Educational Institute ٧. CBDT (Bom) . . . 16

Export --Special deduction under 80HHC-section Supporting manufacturer--Entitled to special deduction only if had exporter realised profits--**Exporter** incurring loss--Supporting manufacturer not entitled to special deduction--Incometax Act. 1961, s. 80HHC--**Bhatsons** Acquatic Products v. CIT (Ker) . . . 67

Income from undisclosed sources --Unexplained money--Cash discovered during search operations--No proper explanation for such cash--Deletion of addition of cash to income of assessee--Not iustified--Matter remanded--Incometax Act, 1961, s. 69A--CIT В. ٧. Rajashekharan Nair (Ker) . . . 123

Industrial undertaking
--Special deduction
under section 80-IA-Condition precedent-Manufacture or
production of article-Fish processing
does not amount to
manufacture--Not

entitled to special deduction under section 80-IA--Income-tax Act, 1961, s. 80-IA-- Bhatsons Acquatic Products v. CIT (Ker) . . . 67

Reassessment Notice--Condition precedent--Formation of belief that income escaped assessment--Assessing Officer treating share application money bogus accommodation entries--Payments through banking channel and companies investing money genuine--No independent application of mind by Assessing Officer but acting under information from investigation wing--Notice to. quashed--Income-tax Act, 1961, ss. 147, 148--Sarthak Securities Co. P. Ltd. v. ITO (Delhi) . . . 110

----Notice--Validity of notice--Material giving rise to reasonable belief of escapement of income sufficient--Material need not be extensive and detailed--Material

could be collected in assessment proceedings for subsequent years--Cash credits not proved to be genuine--Notice of reassessment--Valid--Income-tax Act, 1961, ss. 147, 148--Diwakar Engineers Ltd. v. ITO (Delhi) . . . 28

Refund --Interest--Interest on refund to be calculated from date of excess payment till date of grant of refund--Income-tax Act, 1961, 244(1A)--Roadmaster Industries of India P. Ltd. v. CIT (P&H) . . . 69

Search and seizure --Block assessment--Undisclosed income--Sums found entered in books--Inquiry in regular assessment permissible--Additions in block assessment not permissible--Income-1961. tax Act. 158BC-- Deputy CIT v. Radhe Developers India Ltd. (Guj) . . . 1

Income-tax Act, 1961:

Assessment -Addition--Survey-Excess stock-Disclosure of certain
amount in return-Reduction in
addition of
differential amount
justified--Income-tax
Act, 1961-- Sona
Bazaar v. Asst. CIT
(Bangalore) . . . 492

Business expenditure --Disallowance--Payments in cash exceeding specified limit-cash Unaccounted purchases--**Explanation** that payments made to persons who sold gold ornaments on account of financial emergencies--Conditional admission of cash payments exceeding specified limits retracted later--Revised amount worked out by assessee not rebutted--Addition modified to 3 per cent.--No material evidencing inflated purchases--Addition on inflated purchase sustainable-not Income-tax Act. 1961. S. 40A(3)--Sona Bazaar v. Asst. CIT (Bangalore) . . . 492

Capital gains --Sale of land with trees plants--Land and acquired by father of assessee along with trees--Deduction allowed on entire indexed cost of acquisition--Part of sale proceeds not agricultural income--Income-tax Act, 1961, 45--Abhinav Aimera v. Asst. CIT (Delhi) . . . 482

Deduction of tax at source --Failure to deduct tax--Limitation for passing order under 201--After section four years but within six years from end of relevant financial vear--Not barred by limitation--Incometax Act. 1961, ss. 195, 201(1)--Deputy Director of Income-tax v. Tata Iron and Steel Co. Ltd. (Mumbai) . . . 463

----Payments to non-resident-Reimbursement of expenses--Tax not deductible--Balance amount in Indian rupees--Tax deductible--Incometax Act, 1961, s. 195--Deputy Director of Income-tax v. Tata

Iron and Steel Co. Ltd. (Mumbai) . . . 463

Loss --Speculation business--Definition--**Transactions** in derivatives on notified stock exchange excluded with effect from 1-4-2006--Exchanges notified on 25-1-2006--Transactions carried out in previous vear relevant to assessment vear 2006-07, eligible for benefit of section 43(5)(d)--Loss derivative transactions to set off against profit earned in purchase and sale of shares on delivery basis--No expenditure can be allocated towards speculative **business**--Income-tax Act, 1961, s. 43(5)(d)-- Smt. Seema Jain v. Asst. CIT (Delhi) . . . 488

Non-resident Income deemed to accrue or arise in India --Fees for technical services--Management and selling commission paid to non-resident lead managers Indian company in connection with

issue of global depository receipts--Not taxable--Reimbursement of expenses to nonresident--Not taxable--Legal services part and parcel of issue of global depository receipt--Legal charges incurred by Indian company in U. K. accepted as fees for technical services--Legal charges paid to advisors at Hong Kong fees for technical services--Income-tax Act, 1961, s. 9(1)(vii), Expln 2 --Double **Taxation** Avoidance Agreement between India and U. K-- Deputy Director of Income-tax v. Tata Iron and Steel Co. *Ltd.* (Mumbai) . . . 463

Penalty Concealment of income--Addition on account of difference in calculation of depreciation arising due to rectification of earlier orders--Adjustment opening written down value of assets result of written down value finally worked out in earlier vears--

Deletion of penalty justified--Income-tax Act, 1961, s. 32--Asst. CIT v. Nuchem Ltd. (Delhi) . . . 429

----Concealment of income--Capital gains--Long-term capital loss--Loss on sale of shares--Carry forward and set off--Claim of set-off of long-term capital loss against business income of current year after indexed applying cost of acquisition--Not permissible--Withdrawal of claim under compulsion--Claim not bona fide--**Deliberate** furnishing of inaccurate particulars of income--Penalty justified--Income-tax Act, 1961, ss. 71, 271(1)(c)-- Asst. CIT v. Nuchem Ltd. (Delhi) . . . 429

----Concealment income--Provision for bad and doubtful debts--Debit provision to profit and loss account--Claim of provision for doubtful debts disclosed in account--Discharge of burden by under assessee

Explanation 1 to section 271(1)(c)--Levy of penalty not justified--Income-tax Act, 1961, ss. 36(1)(vii), 271(1)(c)--Asst. CIT v. Nuchem Ltd. (Delhi) . . . 429

----Concealment of income--Remission liability-of **Unclaimed liabilities** written back to profit and loss account deduction but thereof claimed--**Explanation** that deduction claimed by mistake--Not bona fide--Acceptance of addition not voluntary--Penalty iustified--Income-tax Act, .1961. 🔰 s. 271(1)(c)-- Asst. CIT v. Nuchem Ltd. (Delhi) . . . 429

----Concealment of income--Rental income not disclosed in original or revised returns--Disclosure of rental income after enquiry by Assessing Officer under compulsion--Penalty iustified--Income-tax Act, 1961, 271(1)(c)--Asst. CIT v. Nuchem Ltd. (Delhi) . . . 429

----Furnishing of inaccurate particulars of income--Items not included in closing stock on ground sistersold to concern--Sale to sister-concern prior purchase assessee--**Explanation** not bona fide and failure furnish relevant particulars of claim--Case of claim false and furnishing of inaccurate particulars of income--Penalty iustified--Income-tax Act. 1961. 271(1)(c)-- Asst. CIT v. Nuchem Ltd. (Delhi) . . . 429

SUPREME COURT

Company Incorporation--Agreement entered into showing company represented by managing director party--Company incorporated after date of agreement--Company nonexistent at time of agreement--Effect--No agreement--Companies Act, 1956, ss. 34(2), 149(3), (4)--

Specific Relief Act, 1963, s. 15-- Andhra Pradesh Tourism Development Corporation Ltd. v . Pampa Hotels Ltd. . . 1

Scheme of amalgamation and compromise Landlord and tenant--Company landlord of premises holding eviction order passed by Rent Controller--Amalgamation of company with another during pendency of revision petition by tenant--All rights and assets company vesting in transferee company--Transferee company entitled to execute eviction order--Companies Act, 1956, ss. 391, 394--Tamil Nadu Urban Land (Ceiling) and Regulation) Act, 1978--Tamil Nadu Buildings (Lease and Rent Control) Act. Speedline 1960--Agencies v. T. Stanes & Co. Ltd 33

HIGH COURTS

Chartered accountant -- Professional misconduct--Statutory

auditor--Chartered accountant director of holding company and auditor subsidiary company--Separate corporate entities--Not guilty of professional misconduct--Chartered Accountants Act, 1949, Sch. I, cl. (11)--Yogeshwari Kumari v. Institute of Chartered Accountants of India (Delhi) . . . 11

Company Law Board --Consent order--Enforcement of orderpassed -Order Board regarding willingness of party to exit company on receipt of fair value shares--Not a for concluding executable agreement--Disagreement between parties regarding fair value--Consideration, basic ingredient of settlement not settled--Order **Company Law Board** not an executable order and cannot be enforced--Companies Act. 1956, s. 634A--Indian Contract Act. 1872. ss. 10. 29--Gurlal Singh Grewal v . Upper India Steel Manufacturing and Engineering Company Ltd . (P & H) . . . 66

Director -- Disqualification-- Subject-matter pending adjudication before another High Court-- To await decision-- Companies Act, 1956, s. 226(3), (4)-- Yogeshwari Kumari v . Institute of Chartered Accountants of India (Delhi) . . . 11

Foreign exchange --Company--Appeal to Court--Hiah Jurisdiction of court--Principles under Code of Civil Procedure, 1908 do apply--Court not whose within iurisdiction company ordinarily resides or carries on business--Company registered having doing office and **business** in Bangalore--Appeal does not lie **Bombay High Court-**-Foreign Exchange Regulation Act, 1973, SS. 16(1)(a), 54--Foreign Exchange Management Act. 1999, s. 35, Expln.--Code of Civil Procedure, 1908, s. 20--Companies Act.

1956, ss. 209(2), 209A, 228-- Hasmukh K. Rawal v . Union of India (Bom) . . . 17

Offences and prosecution --Offence by company--Cheques--Dishonour of cheque--Director--Liability--Mere fact of being director on date of offence not sufficient to make director liable--Specific averments how director was in charge and responsible for dayto-day affairs company on date of offence necessary--Mere repetition of requirements prescribed under section 141 not sufficient--Absence specific averments--Complaint as against such director quashed--Code of Criminal Procedure. 1973, s. 482--Negotiable Instruments Act. 1881, ss. 138, 141--Smt. Sujatha Rana v . Dilip Kumar (Karn) . . . 28

Scheme of arrangement -Sanction of court-Workers union with well-wisher seeking

revival of company without approval of secured creditors--Failure by secured creditors to respond advertisement would not amount to waiver their of rights--Stav of winding up for limited period with formation of committee of management to function during period of stay--Temporary order would not negate order of winding up--Order of stay not extended--Committee of management / to continue only for quarding assets of company till official liquidator took possession of assets--Companies Act. 1956, ss. 391, 466--**AOP** 394. (India) Р. Ltd. Workers Union v . Official Liquidator (Cal) . . . 102

Winding up --Grounds for winding up--Inability to pay debt--Company neither raising good defence nor issue triable but remote possibility of showing that balance goods were

delivered to agent--Creditor company relegated to suit subject to conditions--Companies Act, 1956, 433(e)--Rashmi Cement Ltd *V* . Presidency Exports and Industries Ltd. (Cal)110

----Grounds for winding up--Inability to pay debts--No proof of reply to statutory notice--Presumption insolvency--Unconditional admission of liability tendering cheques--Winding up petition admitted subject to conditions--Companies Act, 1956, ss. 433(e), 434(1)(a)--Nauranglal Agarwal v . Ramsarup Industries Ltd .(Cal) . . . 55

----Secured creditors--Bank holding decree **Debts** from Recovery Tribunal--Application to stay outside winding up and realise security on its own--Direction for constitution of sale committee with bank as member and official liquidator as convenor--Sale committee to property valued and conduct auction-Companies Act, 1956,
ss. 529, 529A-Indusind Bank Ltd. v.
Official Liquidator of
Hydron Enviro
Systems Ltd. (Guj)...
59

COMPANY LAW BOARD ORDERS

Oppression and mismanagement relief--Petition for Maintainability--**Petition** to investigate into affairs of company alleging falsification of records. defrauding and cheating--Petitioners not shareholders of company--Allegations not proved--Petition filed with mala fide intention--Investigation not to be ordered--Petition to liable be dismissed--Companies Act. 1956. ss. 235, 237, 397, 398-- M. Palanisamy v . S. V. T. Spinning *Mills P. Ltd.* . . . 73

Petition for relief--Necessary parties--Auditor and Company Secretary--Family company--No prima facie case made out against

professionals and their presence not necessary to examine dispute between two groups of family--**Professional** misconduct by auditor and company secretary not to be normally examined by Law Company **Board--Auditor** and company secretary deleted from array of parties--Companies Act. 1956, ss. 397. 398, 402, 406- R. Ravichandran v . Sree Bright Lakshmiram Ρ. Bars Ltd . . . 97

SUPREME COURT

Exemption--Sales tax--Notification exempting smallscale industrial units which had invested not more than Rs. 5 lakhs--Interpretation--Investment had to be in origin not more than Rs. 5 lakhs--Machinery of larger value not entitled to exemption even if depreciation after value comes to less than Rs. 5 lakhs--Notification No. 1428-FT dated May 26, 1994--West Bengal Sales Tax Act (4 of 1954), s. 4AA--West Bengal Sales Tax Rules, 1995, r. 41.--Bhai Jaspal Singh v. Assistant Commissioner of Commercial Taxes P. 456

Interest--Sales tax--Interest on sales tax due to non-payment in time--Accrues delay--No need any demand notice--Bengal Finance (Sales Tax) Act (6 of 1941), s. 10A--West Bengal Sales Tax Act (49 of 1994), s. 31.--Bhai Jaspal Singh v. Assistant Commissioner Commercial Taxes P. 456

HIGH COURTS

Appeal--Sales tax--Assessment--Predeposit--Appellate authority dismissing appeal for failure to pre-deposit make without passing order on assessee's application for exemption from predeposit--Appeal dismissed by Tribunal also--Matter remitted to first appellate authority--

Himachal Pradesh General Sales Tax Act (24 of 1968), s. 30(5), proviso.--Nav Durga Marketing Co. v. State of H. P. (HP) P. 426

Cenvat credit--Service tax--Excise duty--Assessee availing of benefit of notification for payment of excise duty by opting for self-credit procedure--Utilizing credit for cenvat payment of service tax and taking selfcredit therefor--Subsequently realizing error and depositing service tax--Payment of duty excise also made in terms of notification--Larger available sum in cenvat credit account--**Department** not seek entitled to payment of amount utilized for payment of service tax by treating same as excess refund--Central Excise Act (1 of 1944)--Notification No. 39/2001-CE dated July 31, 2001.--Commissioner Central Excise and Customs V. Parle

Products Private Limited (Guj) P. 437

Entries in Schedule--Desk top projectors--Used presentation in boardrooms and classrooms but not capable of use in regular cinemas--Does not fall under "cinematographic equipment. including projectors"--Falls under entry mentioning projectors as independent item. "television sets of all kinds. projectors"--Tamil Nadu General Sales Tax Act (1 of 1959), Sch. I, Part B, entries 44, 50, Part D, entry 33.--State of Tamil Nadu v. Hansa Cine Equipment (P) Ltd. (Mad) P. 411

Exemption--Sales tax--Sale of machinery for "setting up of industry"--Setting up of industry a continuous process--Does not exclude expansion of industry--Purchase of machinery after commencement of commercial

production--But within operative period of notification--Entitled exemption--Rajasthan Sales Tax Act (29 of 1954), s. 4(2)--Notification No F.4(66) FDGr.IV/82-84 (S. O. 255) dated December 6, 1990 .--Commercial Taxes Officer, Raisamand v. Shri Rolex Marbles Pvt. Ltd. (Raj) P. 417

Inter-state sale--Goods supplied to works at Vapi in Gujarat pursuant to order placed administrative office Mumbai--That goods moved from Maharashtra to Gujarat in pursuance of and incidental contract established by facts supported documents-bv Transaction inter-State sale--Central Sales Tax Act (74 of 1956), s. 3(a).--K. C. Metal Industries Commissioner of Sales Tax, Mumbai (Bom) Ρ. 403

Notice--Value added tax--Natural justice--Assessment of escaped turnover--Notice stating party at liberty to have

hearing on any date, within the time stipulated for submitting statement of objections--Not sufficient to meet mandatory requirement of giving reasonable opportunity of being heard before making assessment--Order assessing escaped turnover set aside--Kerala Value Added Tax Act, 2003 (30 of 2004), s. 25(1), first proviso.--Suzion Infrastructure Service Ltd. v. Commercial Tax Officer (W. C), Commercial Taxes, Kochi (Ker) P. 451

Reassessment--Trade tax--Central sales taxtransfers---Branch **Provision** making filing of form mandatory--Reopening of assessment on ground some form F incomplete--Dealer not disputing this in reply to notice--No occasion durina original assessment to examine each and everv form individually--Reassessment not change of opinion--Valid--U. P.

Trade Tax Act (15 of 1948), s. 21--Central Sales Tax Act (74 of 1956), s. 6A.--Pernod Ricard India (P) Ltd. (formerly known as Seagram India Pvt. Ltd.) v. State of Uttar Pradesh (All) P. 446

Composition of tax-added Value tax--Dealer disentitled to option in year in which he imports goods or has stock of imported goods--Entitlement for each be vear to afresh-considered Dealer having paid penalty in earlier for vear unauthorised import--Direction authority to verify whether stocks of such imported goods still with dealer and pass order accordingly--West Bengal Value Added Tax Act (37 of 2003), s. 16(3)--West Bengal Value Added Tax Rules, 2005, r. 38(6).--Aloke Patra v. **Deputy Commissioner** of Commercial Taxes. Burrabazar Circle P. 428

Sale price--Sales tax--Freight whether part of sale price--Agreement for supply

delivery and of insulators to Electricity Board--Freight and insurance be to charged separately--Sale complete at time of issue of despatch clearance and dealer arrange for despatch--Purchaser liable to pay freight at agreed rate for obtaining physical of goods-delivery Freight not part of price--West sale Bengal Sales Tax Act (49 of 1994), s. 2(31).--India **Potteries** Limited v. Assistant Commissioner of Commercial Taxes. Taltala Charge P. 484

Search and seizure--Value added tax--Evasion of tax--Check-post--Penalty-produce Failure to way-bill-endorsed Exemption from penalty where goods personal effects--"Personal effects". meaning of--Import of excavator for use in own project--Not a personal effect--Seizure proper--Mens essential-not rea Levy of penalty valid--But quantum reduced--West Bengal Value Added Tax Act (37 of 2003). s. 77--West Bengal Value Added

Tax Rules, 2005, rr. 99(2)(a), 125(5).--Jay Prokash Chowhan *v.* Sales Tax Officer, Phansidewa More Check-post P. 472

Settlement of disputes--Sales tax--Certificate of settlement--Conclusive--Revocation of certificate--Conditions precedent--Reasons to be recorded and dealer to be granted opportunity to heard--Revocation on basis of report of Bureau of Investigation--Revocation by ex parte order without adjudication of allegations--Order of revocation invalid--West Bengal Sales Tax Act (49 of 1994), s. 52(5)--West Bengal Sales Tax (Settlement of Disputes) Act (4 of 1999), ss. 9, 12--West Bengal Sales Tax 1995. Rules. 245(2).--Digicontrols Private Northern Limited v. Assistant Commissioner of Commercial Tax. Chowringhee Circle P. 524

Service tax--Liability--Taxable service--Mining activity undertaken by assessee--Taxable with effect from June 1, 2007--Assessee not liable to pay tax "business under auxiliary services" prior to June 1, 2007--Finance Act (32 of 1994).--Commissioner of Central Excise. Belgaum v. SVM Nett Project Solutions Pvt. Ltd. (CESTAT--Bang) Ρ. 517

--Penalty--Delay ●in payment of service tax--Relief on ground of reasonable cause--Assessee registered as service provider being unaware of tax liability--Finding of original authority delay not on account of fraud, collusion or wilful misstatement with an intention to evade tax--Assessee entitled to relief under section 80--Finance Act (32 of 1994), ss. 76. 77, 80.--Commissioner of Central Excise. Belgaum v. SVM Nett Project Solutions Pvt. Ltd. (CESTAT--Bang) P. 517

SUPREME COURT

Excise duty -- Appeal--Rectification of mistakes--Application before Tribunal confined only to one issue--Appeal Supreme Court--Issue raised not application cannot be appeal-raised in Central Excise Act. 1944, ss. 35C(2), 35L-CCE V. Oswal Petrochemicals Ltd 297

Service tax Exemption--Notification exempting coaching centres including computer training institute--Computer training institute not covered by second exemption notification--Express exclusion by subsequent notification--Clarificatory--Finance Act, 1994, s. 93--Notification No. 24/2004/ST (GSR 598(E)), dated 10-9-2004, as amended by Notification No. 19/2005/ST (GSR 361(E)), dated 7-6-2005-- CCE v. Sunwin Technosolution P. Ltd. . . . 242

HIGH COURTS

Customs duty --Private bonded warehouse licence--Failure of licensee to

pay cost recovery charges--Private bonded warehouse requiring regular and continuance supervision--That unit closed not justification for failure to pay--Cost charges recovery imposed with accordance specific condition of licence iustified--(Fees for Customs Rendering Services by Customs Officers) Regulations, 1968 cannot override Customs Act, 1962--Customs Act, 1962, s. 58--Customs (Fees for Rendering Services by Customs Officers) Regulations, 1968--Kapoor International v. CCE (P&H) . . . 246

Estoppel --No estoppel against statute-- Sports Club of Gujarat Ltd. v. Union of India (Guj) 267

Excise duty -- Liability pay duty--Beer--"Wastage", meaning of--Licensed manufacturer of beer--Unsold beer remaining in warehouse--Not wastage--No liability incurred by manufacturer since unsold beer remaining in warehouse lost its excisable character and was not removed from warehouse for sale within State--Not liable to pay duty--Bihar Excise Act. 28--1915. ss. 27. Iceberg Industries Ltd. State of Bihar V. (Patna) . . . 251

----Rebate--Duty on inputs used in manufacture of products exported outside India--Failure by assessee to follow procedures mentioned under notification--Production of inputdeclaration output after export had taken place--Noncompliance with substantive condition not condonable--Rejection of claim of rebate--Justified--Central Excise Rules. 1944. r. 12(1)(b)--Notification No. 42/1994-CE (N. T.) 21-9-1994-dated Tablets India Ltd. v. Joint Secretary Ministry of Finance (No. 1) (Mad) . . . 255

----Rebate--Duty paid on inputs used in manufacture of exported goods--Failure by assessee to follow procedure

mentioned under notification--Absence of any other lapse or wilful omission--Fact of export not dispute--Assistant Commissioner can exercise discretionary power vested in him and sanction claim of rebate--Central Excise 1944, Rules, 12(1)(b), proviso--Notification Nos. dated 21-9-42/94. 1994 47/94. and 22-9-1994-dated Tablets India Ltd. v. Joint Secretary Ministry of Finance (No. 2) (Mad) . . . 262

High Court -- Practice--Taxation-- High Court should follow interpretations of provisions of all India statute by another High Court-- Sports Club of Gujarat Ltd. v. Union of India (Guj) . . . 267

Service tax -- Mandap keeper--Members club--Club providing facilities including space as a venue for holding social. commercial and business functions. meeting and gatherings its to members--Not liable as mandap keeper--Finance Act, 1994, s.

65(19), (20), (41)(p)--Sports Club of Gujarat Ltd. v. Union of India (Guj) . . . 267

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

Excise duty -- Cenvat credit--Hard-boiled confectionery sugar packed in pet jars, in packed in turn corrugated boxes--Assessee purchasing pet jars and corrugated boxes different from two manufacturers--Duty paid on corrugated invoiced boxes assessee's name but supplied through pet manufacturer-> iar Assessee availing of credit on corrugated boxes based on invoice issued by manufacturer--Proper--Substantial benefit not to be denied due to procedural incorrectness--Demand of duty with interest imposition of penalty--Set aside--Central Excise Act, 1944, s. 11AC--Leamak Healthcare P. Ltd. v. CCE (Ahmedabad) . . . 287

----Cenvat credit--Input services--Marine inland transit insurance, insurance policy taken for transit of money, follow-up services and insurance of persons--Are input services eligible for Cenvat credit--Telephone services in residence of general manager and company guest house not related to manufacture of finished goods--Not credit-eligible for Cenvat Credit Rules, 2004. r. 15(1)--Ispat and Monnet Energy Ltd. v. CCE (New Delhi) . . . 281

----Cenvat credit--Interest--Wrongful availment of credit--Shortage of capital which goods on Cenvat credit was taken--Reversal of credit--That capital goods received in factory. utilised for manufacture of excisable goods not contradicted--Goods used for intended purpose manufacturing excisable goods--Demand of interest under rule 12/14 of Cenvat Credit Rules. 2002/2004--Not proper--Cenvat Credit Rules, 2002, r. 12--Cenvat Credit Rules, 2004 r. 14--Central Excise Act, 1944, s. 11AB-- Mahindra and Mahindra v. CCE (Mumbai) . . . 278

----Cenvat credit--Penalty--Interest--Wrongful availment of credit--Reversal of entire 🔪 credit at instance of Department--No material indicating reversal made under protest--No specification of capital goods claimed to be components, spares accessories--No rule benefit of 2(a)(A)(iii) of Cenvat Credit Rules, 2004-of Demand duty, interest and penalty iustified--Central Excise Act, 1944, ss. 11AB, 11AC--Cenvat Credit Rules, 2004, r. 2(a)(A)(iii)-- CCE v. Greaves Cotton Ltd. (Mumbai) . . . 292

----Cenvat credit--Wrongful availment of credit--No allegation fraud. wilful suppression, collusion or mis-statement in show-cause notice--No mention of intention to evade duty nor contravention of specific provision of

law by assessee--Sub-rule (1) and not sub-rule (2) of rule 15 applicable--Penalty exceed cannot amount of duty or Rs. 2,000 whichever is greater--Central Excise Act, 1944, s. 11AC--Cenvat Credit Rules, 2004, r. 15--CCE Greaves V. Cotton Ltd. (Mumbai) . . . 292

to be on proprietors--Central Excise Rules, 2002, rr. 25, 26-- *V. K. Enterprises v. CCE* (New Delhi) . . . 300

----Penalty--Cenvat credit--Cenvat credit based taken invoices of registered dealers without inputs-receiving Purchase and sale of goods in grey market on cash basis by firststage dealers without raising invoices--Continuing obligation manufacturer/register ed dealer to account for goods on which credit taken and passed on--Diverted goods 🧥 liable for confiscation--Documents issued by dealers without supply invalid-of goods Credit cannot be passed on through such documents--Imposition of penalty justified--Penalties imposed proprietory concerns--No separate penalties