

WEEKLY UPDATES
06-12-2010 to 12-12-2010

VIKAS GUPTA

INDEX		
SL. NO.	PARTICULARS	PAGE NO.
	SEBI	
1.	Half yearly report by Trustees	3
2.	Smart Order Routing (SOR) - Clarification	4-5
	RBI	
1.	Opening of bank accounts - salaried employees	6
2.	Ownership of units – Two or more undertakings under the same ownership – Status of the unit	7-10
3.	Know Your Customer (KYC) norms/Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act, 2002	11
4.	Submission of data to Credit Information Companies	12
5.	Operation of bank accounts & money mules	13
6.	Know Your Customer (KYC) guidelines - Salaried Employees	14
7.	Financial Inclusion by Extension of Banking Services – Use of Business Correspondents / Business Facilitators by Urban Co-operative Banks	15-21
	CUSTOM	
1.	Anti Dumping Duty on parts/components of Compact Fluorescent Lamps (CFL) from China and Hong Kong	22-23
	SERVICE TAX	
1.	Electricity meter installed in consumers' premises and hire charges collected – whether covered under exemption for transmission and distribution of electricity	24
	IRDA	
1.	Policy Guidelines for Sharing of Information	25-28
	CASE LAWS	29-38

SEBI UPDATES

CIRCULAR

Cir/ IMD/ DF/20/2010

December 06, 2010

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

Dear Sir/Madam,

Sub: Half yearly report by Trustees

1. Gold Exchange Traded mutual fund schemes (Gold ETFs) can invest in gold as per circular SEBI/IMD/CIR No. 4/58422/06 dated January 24, 2006.

2. It has been decided that **physical verification of gold underlying the Gold ETF units shall be carried out by statutory auditors of mutual fund schemes and reported to trustees on half yearly basis.**

3. The confirmation on physical verification of gold as above shall also form part of half yearly report by trustees to SEBI. Accordingly, the following is added to Annexure II of the circular MFD/CIR/09/014/2000 dated January 5, 2000:

a. 'Whether the assets of Gold ETF are invested in gold as per the asset allocation mentioned in the Scheme Information document? and

b. Whether physical verification of gold was conducted by statutory auditor?'

4. This shall come into effect from the half yearly report ending April 2011 by trustees to SEBI.

5. The said circular stands modified to this extent. All other conditions in the said circular remain unchanged.

6. 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 provisions of regulation 77 of SEBI (Mutual Funds) Regulations, 1996 to protect the interests of the 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
Tel no. 022-26449250
Email- ashas@sebi.gov.in

SEBI UPDATES

CIRCULAR

CIR/MRD/DP/ 36 /2010

December 09, 2010

To

All Stock Exchanges

Dear Sir / Madam,

Sub: Smart Order Routing (SOR) - Clarification

1) This is further to the SEBI circular no. CIR/MRD/DP/26/2010 dated August 27, 2010 regarding 'Introduction of Smart Order Routing'. Upon examination of the circulars issued by the stock exchanges having nationwide terminals and representations received from few market participants, it has been decided to modify the aforesaid circular as under:

(i) The point 3(vii) of the aforesaid circular is modified as follows:

Stock Broker shall communicate to all clients the features, possible risks, rights, responsibilities and liabilities associated with the smart order routing facility. The client desirous of availing such facility shall do so by entering into a broker-client agreement, as applicable. For the existing clients, the same shall be implemented through an addendum to the existing broker-client agreement, as applicable.

(ii) **Stock exchange shall permit smart order routing for all orders, without restricting to any specific type of order.** The choice on order types shall be left to the client.

(iii) If stock exchange desires to advise its brokers to seek re-approval, it may do so only in case of –

(a) **Inclusion of a new stock exchange for offering SOR facility;** and/or,

(b) Material changes in the software/system of the smart order routing facility.

(iv) The point 3(iv) of the SEBI circular no. CIR/MRD/DP/26/2010 dated August 27, 2010 is modified as follows:

Stock exchange shall communicate its decision to the broker within 30 calendar days from the date of receipt of complete application by the stock exchange. Stock exchange shall not consider testing and demonstration of the SOR system/software as a criterion for declaring the application of the broker as 'complete'. Further, testing and demonstration of SOR system/software, if required, shall be suitably scheduled within the aforesaid period of 30 calendar days.

(v) **In case of rejection of the application on smart order routing of a stock broker, the stock exchange shall communicate such reasons of rejections to the stock broker. Further, the decision of the stock exchange on the SOR application of the stock broker and reasons for rejection of the SOR application shall also be communicated to all the other stock exchanges where the broker's SOR facility intends to route orders.**

(vi) In addition to the point 3(xix) of the SEBI circular no. CIR/MRD/DP/26/2010 dated August 27, 2010, stock exchange shall permit SOR approved brokers to offer SOR facility through all their servers irrespective of their location in India.

2) The Stock Exchanges are advised to:

i. put in place the adequate systems and issue the necessary guidelines for implementing the above decision.

ii. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above

iii. bring the provisions of this circular to the notice of the stock brokers and also disseminate the same on their website.

iv. communicate to SEBI, the status of the implementation of the provisions of this circular in the Monthly Development Report.

3) This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,

Harini Balaji
Deputy General Manager
harinib@sebi.gov.in

RBI UPDATES

Circular

RBI/2010-11/298
RPCD.CORRB.AML.BC.No.31/ 03.05.33(E)/2010-11

December 06, 2010

**The Chairmen
All Regional Rural Banks (RRBs)**

Dear Sir,

Opening of bank accounts - salaried employees

Please refer to our circular [RPCD. No. RRB. BC. 81/03.05.33\(E\) / 2004-05 dated February 18, 2005](#) on 'Know Your Customer'(KYC) Guidelines – Anti Money Laundering Standards. In Annex II to the Guidelines on 'Know Your Customer' norms and Anti-Money Laundering Measures enclosed with the circular, an indicative list of the nature and type of documents/ information that may be relied upon for customer identification and address verification for opening bank accounts has been given.

2. It has been brought to the notice of RBI that for opening bank accounts of salaried employees, some banks rely on a certificate/letter issued by the employer as the only KYC document for the purposes of certification of identity as well as address proof. Such a practice is open to misuse and fraught with risk. It is, therefore, clarified that with a view to containing the risk of fraud, banks need to rely on such certification only from corporates and other entities of repute and should be aware of the competent authority designated by the concerned employer to issue such certificate/letter. Further, **in addition** to the certificate from employer, RRBs should insist on at least one of the officially valid documents as provided in the Prevention of Money Laundering Rules (viz. passport, driving licence, PAN Card, Voter's Identity card, etc.) or utility bills for KYC purposes for opening bank account of salaried employees of corporates and other entities.

3. These guidelines are issued under Section 35A of the Banking Regulation Act, 1949 and Rule 7 of 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. Any contravention thereof or non-compliance shall attract penalties under Banking Regulation Act.

4. Compliance Officer/Principal Officer should acknowledge receipt of this letter to our Regional Office concerned.

Yours faithfully

(B.P.Vijayendra)
Chief General Manager

RBI UPDATES

Circular

RBI/2010-11/305
RPCD.SME & NFS.BC.No. 35 /06.02.31 (P)/2010-11

December 6, 2010

To,
The Chairman / Managing Director
All Scheduled Commercial Banks
(excluding RRBs)

Madam / Dear Sir

Ownership of units – Two or more undertakings under the same ownership – Status of the unit

Please refer to our circular [RPCD.No.PLNFS.No.BC.67/06.03.01/93-94 dated November 22, 1993](#) on the captioned subject ([copy enclosed](#)) wherein banks were advised to follow the guidelines outlined in Notification No. S.O.2 (E) dated 1 January 1993 issued by Government of India, Ministry of Industry for the purpose of determining Small Scale Industries status of the units.

2. As the MSMED Act, 2006 does not provide for clubbing of investments of different enterprises set up by the same person / company for the purpose of classification as micro, small and medium enterprises, Government of India, vide office memorandum No.5(10)2007 MSME/POL dated April 15, 2009, have intimated that the provision, as notified in Gazette Notification No. S.O.2 (E) dated 1 January 1993, of clubbing of investments of two or more enterprises under the same ownership for the purpose of classification of industrial undertakings as SSI (further notified in the principal notification No. S.O.857 (E) dated December 10, 1997), has been rescinded vide Notification No. S.O.563 (E) dated February 27, 2009. Copies of the Notifications are enclosed.

3. You are advised to issue suitable instructions to your branches / controlling office and accord wide publicity to the same.

Yours faithfully

(B.P. Vijayendra)
Chief General Manager

Encl: as above

RPCD.No.PLNFS.No.BC.67/06.03.01/93-94

November 22, 1993

All Scheduled Commercial Bank

Dear Sir,

Ownership of Units - Two or more Undertakings
under the Same Ownership - Status of the Unit

Please refer to para 2 of our circular RPCD.No.PLNFS.BC.88/PS.72/91-92 dated 12 February 1992 advising you of the decision of Government of India to keep operation of the instructions on clubbing of investments for determining the status of units referred to in our circular RPCD.No.PLNFS.BC.76/PS.72/88-89 dated 25 February 1989 in abeyance till further orders. Government of India Ministry of Industry have now outlined detailed guidelines in respect of equity participations and the meaning of the terms owned, controlled and a subsidiary for the purpose of getting qualified as Small Scale Industries undertakings etc. vide Gazette Notification No. S.O.2 (E) dated 1 January 1993. A copy of the Notification is enclosed. We advise that for the purpose of determining the Small Scale Industries status of the units in term of our circular dated 25 February 1989, you may please follow the guidelines now outlined by Government of India.

We shall be glad if you will please issue suitable instructions to your branches/controlling office.

Yours faithfully,

(Avinash Misra)
Joint Chief Officer

(Published in Extraordinary Gazette of India In Part II Section 3
Sub-Section (ii) Dated 1st January, 1993)

Ministry of Industry
(Department of Industrial Development)
New Delhi

Notification

S.O.2 (E) whereas the Central Government considers it necessary with a view to ascertaining which ancillary and small scale industrial undertaking need supportive measures, exemptions or other favourable treatment, under the Industries (Development and Regulation) Act, 1951 for the purposes specified in section 11-B of the said Act:

And whereas the draft Notification was laid before each House of Parliament for a period of 30 days as required under Subsection (3) of Section 11-B of the said Act.

And whereas no modification in the proposed Notification has been suggested by both Houses of Parliament.

Now, therefore, in exercise of the powers conferred by Subsection (1) of Section 11-B and Sub-section (1) of Section 29-B of the said Act, the Central Government for the purposes of further specifying the requirements which shall be complied with by the industrial undertakings to enable them to be regarded as an ancillary or a small scale industrial undertaking for the purposes of the said Act., makes the following amendments in the Notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O.232 (E) dated the 2nd April, 1991 namely :

In the said Notification, in the Table, in paragraph II the existing note shall be numbered as Note 1 thereof and after Note1, as so numbered, the following Explanation and Note shall be inserted, namely :

Explanation : For the purposes of this Note

(A) "Owned" shall have the meaning as derived from the definition of the expression "owner" specified in clause (f) of Section 3 of the Industries (Development & Regulation) Act, 1951 (65 of 1951);

(B) "Subsidiary" shall have the same meaning as in clause (47) of Section 2, read with Section 4, of the Companies Act, 1956 (1 of 1956);

(C) The expression "controlled by any other industrial undertaking" means as under:-

i) where two or more industrial undertakings are set up by the same person as a proprietor, each of such industrial undertakings shall be considered to be controlled by the other industrial undertaking or undertakings;

ii) where two or more industrial undertakings are set up as partnership firms under the Indian Partnership Act, 1932 (1 of 1932) and one or more partners are common partner or partners in such firms, each such undertaking shall be considered to be controlled by the other undertaking or undertakings;

iii) where industrial undertakings are set up by companies under the Companies Act, 1956 (1 of 1956), an industrial undertaking shall be considered to be controlled by other industrial undertaking if

a) the equity holding by other industrial undertaking in it exceeds 24% of its total equity; or

b) the management control of an undertaking is passed on to the other industrial undertaking by way of the Managing Director of the first mentioned undertaking being also the Managing Director or Director in the other industrial undertaking or the majority of Directors on the Board of the first mentioned undertaking being the equity holders in the other industrial undertaking in terms of the provisions of (a) and (b) of sub-clause (iv);

iv) The extent of equity participation by other industrial undertaking or undertakings in the undertaking as per sub-clause (iii) above shall be worked out as follows :

a) the equity participation by other industrial undertaking shall include both foreign and domestic equity;

b) equity participation by other industrial undertaking shall mean total equity held in an industrial undertaking by other industrial undertaking or undertakings, whether small scale or otherwise, put together as well as the equity held by persons who are Directors in any other industrial undertaking or undertakings;

c) equity held by a person, having special technical qualification and experience, appointed as a Director in a small scale industrial undertaking, to the extent of qualification shares, if so provided in the Articles of Association, shall not be counted in computing the equity held by other industrial undertaking or undertakings even if the person concerned is a Director in other industrial undertaking or undertakings;

v) where an industrial undertaking is a subsidiary of or is owned or controlled by any other industrial undertaking or undertakings in terms of sub-clause (i) sub-clauses (ii) or sub-clause (iii) and if the total investment in fixed assets in plant and machinery of the first mentioned industrial undertaking and the other industrial undertaking or undertakings clubbed together exceeds the limit of investment specified in paragraph I or II of this Table, as the case may be, none of these industrial undertakings shall be considered to be a small scale or ancillary industrial undertaking.

Note 2:

a) In calculating the value of plant and machinery for the purpose of this Notification, the original price thereof, irrespective of whether the plant and machinery are new or second hand, shall be taken into account.

b) In calculating the value of plant and machinery, the following shall be excluded, namely :

i) the cost of equipments such as tools, jigs, dies moulds and spare parts for maintenance and the cost of consumable stores;

ii) the cost of installation of plant & machinery;

iii) the cost of Research and Development (R & D) equipment and pollution control equipment;

iv) the cost of generation sets, extra transformer, etc. installed by the undertaking as per the regulations of the State Electricity Board;

v) the bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;

vi) the cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted on individual machines), oil circuit breakers/miniature circuit breakers, etc., which are necessarily to be used for providing electrical power to the plant and machinery/safety measures;

vii) the cost of gas producer plant;

viii) transportation charges (excluding of taxes e.g. Sales tax, Excise etc.) for indigenous machinery from the place of manufacturing to the site of the factory;

ix) charges paid for technical know-how for erection of plant and machinery;

x) cost of such storage tanks which store raw materials finished products only and are not linked with the manufacturing process; and

xi) cost of fire fighting equipments.

c) In the case of imported machinery, the following shall be included in calculating the value, namely:

i) Import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory, demurrage paid at the port);

ii) the shipping charges;

iii) Customs clearance charges; and

iv) Sales tax.

(S. Behura)
Joint Secretary

RBI UPDATES

Circular

RBI/2010-11/300
RPCD.CO.RCB.AML.BC. No.32/07.40.00/ 2010-11

December 7, 2010

The Chief Executives of
all State and Central Co-operative Banks

Dear Sir,

Know Your Customer (KYC) norms/Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act, 2002 (PMLA) - Level of Compliance

Please refer to our circulars [RPCD.AML.BC.No.80/07.40.00/2004-05 dated February 18, 2005](#), [RPCD.CO.RF.AML.BC.No.28 /07.40.00/2009-10 dated September 30, 2009](#) and [RPCD.CO.RF.AML.BC. No. 88/07.40.00/2009-10 dated June 25, 2010](#) on Know Your Customer (KYC) norms/Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT) /Obligation of banks under Prevention of Money Laundering Act (PMLA), 2002.

2. The PMLA, 2002 and the rules made therein imposed obligations on banks to furnish various Reports viz. Cash Transaction Reports (CTRs), Suspicious Transaction Reports (STRs) and Counterfeit Currency Reports (CCRs) to Financial Intelligence Unit-India (FIU-IND) within the stipulated period as provided therein. FIU-IND has observed that the level of compliance with the KYC/AML/CFT measures under PMLA, 2002 is still very poor and some banks have not even taken a policy decision to appoint the Principal Officer of a sufficiently high level who could wield required authority in the bank to implement the KYC/AML/CFT measures sincerely.

3. In view of above, it is advised that banks should take steps to ensure strict compliance with PMLA, 2002 and to appoint officer of the rank of at least Deputy General Manager as Principal Officer and he should be assisted by a team of experienced officers well-versed in KYC/AML/CFT issues.

4. Please acknowledge receipt to our Regional Office concerned.

Yours faithfully,

(B.P.Vijayendra)
Chief General Manage

RBI UPDATES

Circular

RBI/2010-11/301
RPCD.CO.RCB.BC.No.33/07.40.06/2010-11

December 7, 2010

All State and Central Co-operative Banks

Dear Sir,

Submission of data to Credit Information Companies

Please refer to our circular [RPCD.CO.RF.BC.No.17/07.40.06/2010-11 dated September 6, 2010](#) on the captioned subject.

2. It is advised that, on November 25, 2010, the Reserve Bank has issued 'Certificate of Registration' to High Mark Credit Information Services Private Limited to commence the business of credit information. The address of the company is as follows:

High Mark Credit Information Services Pvt. Ltd.
402, 4th Floor, Sheil Estate
158, C.S.T.Road,
Kalina, Santacruz (East)
Mumbai – 400 098
Telephone No: 022-6729 0800
Fax No: 022-6729 0801

3. Please acknowledge receipt to our Regional Office concerned.

Yours faithfully,

(B.P.Vijayendra)
Chief General Manage

RBI UPDATES

Circular

**RBI/2010-11/303
DBOD. AML. BC. No. 65/14 .01.001/2010-11**

December 7, 2010

The Chairmen/CEOs of all Scheduled Commercial Banks (excluding RRBs) / All India Financial Institutions/Local Area Banks

Dear Sir,

Operation of bank accounts & money mules

With a view to preventing banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities Reserve Bank of India has issued guidelines on Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT) that are consolidated in the [Master Circular DBOD.AML.BC.No.2/14.01.001/ 2010-11 dated July 01, 2010](#).

2. It has been brought to our notice that “Money mules” can be used to launder the proceeds of fraud schemes (*e.g.*, phishing and identity theft) by criminals who gain illegal access to deposit accounts by recruiting third parties to act as “money mules.” In some cases these third parties may be innocent while in others they may be having complicity with the criminals.

3. In a money mule transaction, an individual with a bank account is recruited to receive cheque deposits or wire transfers and then transfer these funds to accounts held on behalf of another person or to other individuals, minus a certain commission payment. Money mules may be recruited by a variety of methods, including spam e-mails, advertisements on genuine recruitment web sites, social networking sites, instant messaging and advertisements in newspapers. When caught, these money mules often have their bank accounts suspended, causing inconvenience and potential financial loss, apart from facing likely legal action for being part of a fraud. Many a times the address and contact details of such mules are found to be fake or not up to date, making it difficult for enforcement agencies to locate the account holder.

4. The operations of such mule accounts can be minimised if banks follow the guidelines contained in the Master Circular on Know Your Customer (KYC) norms /Anti-Money Laundering (AML) standards/ Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002. Banks are, therefore, advised to strictly adhere to the guidelines on KYC/AML/CFT issued from time to time and to those relating to periodical updation of customer identification data after the account is opened and also to monitoring of transactions in order to protect themselves and their customers from misuse by such fraudsters.

Yours faithfully,

(Vinay Baijal)
Chief General Manager

RBI UPDATES

Circular

RBI/2010 -11/307

RPCD.CO.RCB.AML.BC. No.37/07.40.00/2010-11

December 10, 2010

The Chief Executives of
all State and Central Co-operative Banks

Dear Sir,

Know Your Customer (KYC) guidelines - Salaried Employees

Please refer to Annex-II to the Guidelines on 'Know Your Customer' Norms and Anti-Money Laundering Measures' enclosed to our [circular RPCD.AML.BC.No.80/07.40.00/2004-05](#) dated February 18, 2005 wherein an indicative list of the nature and type of documents/ information that may be relied upon for customer identification and address verification for opening bank accounts has been given.

2. It has been brought to our notice that for opening bank accounts of salaried employees some banks rely on a certificate/letter issued by the employer as the only KYC document for the purposes of certification of identity as well as address proof. Such a practice is open to misuse and fraught with risk. It is, therefore, clarified that with a view to containing the risk of fraud, banks need to rely on such certification only from corporates and other entities of repute and should be aware of the competent authority designated by the concerned employer to issue such certificate/letter. Further, **in addition** to the certificate from employer, banks should insist on at least one of the officially valid documents as provided in the Prevention of Money Laundering Rules (viz. passport, driving licence, PAN Card, Voter's Identity card etc.) or utility bills for KYC purposes for opening bank account of salaried employees of corporates and other entities.

3. These guidelines are issued under Section 35A of the Banking Regulation Act, 1949 (As applicable to Co-operative Societies) and Rule 7 of 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. Any contravention thereof or non-compliance shall attract penalties under the provisions of the Act.

4. Please acknowledge receipt to our Regional Office concerned.

Yours faithfully,

(B.P.Vijayendra)
Chief General Manager

RBI UPDATES

Circular

RBI/2010-11/308
UBD.BPD. (PCB). Cir. No 28/09.18.300/2010-11

December 10, 2010

The Chief Executive Officers of
All Urban Co-operative Banks

Dear Sir / Madam

Financial Inclusion by Extension of Banking Services – Use of Business Correspondents / Business Facilitators by Urban Co-operative Banks

The Reserve Bank had announced in its Second Quarter Review of Monetary Policy 2010-11 that well managed and financially sound Urban Co-operative Banks (UCBs) would be allowed to engage the services of Business Correspondents (BC) / Business Facilitators (BF) for furthering the objective of financial inclusion. The relevant paragraph of the Review is reproduced below.

“ Business Correspondents / Business Facilitator Model for UCBs

92. With a view to expanding the outreach of the UCBs, thereby furthering the objective of financial inclusion, it is proposed :

- to allow well managed and financially sound UCBs to engage business correspondents (BCs) / business facilitators (BFs) using information and communications technology (ICT) solutions.”

2. With the objective of ensuring greater financial inclusion and increasing the outreach of the UCBs in providing basic and affordable banking services in their area of operation, in public interest, it has been decided to consider requests from well managed and financially sound UCBs to engage Business Facilitator / Business Correspondent using ICT solutions. Accordingly, UCBs may, with the approval of their Board, formulate a scheme for use of Business Facilitators / Business Correspondents and ensure that the scheme is in strict compliance with the objectives and parameters laid down in this circular. The scheme may be submitted to the concerned Regional Office of RBI and approval obtained before engaging the Business Facilitators / Business Correspondents.

Eligibility Criteria

3. Urban Co-operative Banks, which satisfy the following criteria are eligible to engage the services of Business Correspondents / Business Facilitators.

- (a) CRAR of more than 10 per cent;
- (b) Net NPAs less than 5 per cent;
- (c) No default in the maintenance of CRR & SLR during the preceding financial year;

(d) Continuous net profit for the last three years;

(e) At least two elected professional directors on the Board; and

(f) Regulatory comfort based on, inter alia, record of compliance with the provisions of Banking Regulation Act, 1949 (AACS), RBI Act, 1934 and the instructions / directions issued by RBI from time to time.

Urban Co-operative Banks fulfilling the above conditions may approach the Regional Office (Urban Banks Department), RBI for permission to engage Business Correspondents / Business Facilitators.

Business Facilitator Model: Eligible Entities and Scope of Activities

4.1 Under the "Business Facilitator" (BF) model, UCBs may use intermediaries, such as, Non-Government Organisations / Micro Finance Institutions set up under Societies / Trust Acts, Farmers' Clubs, co-operative societies other than primary & credit co-operatives, community based organisations, IT enabled rural outlets of corporate entities, Post Offices, insurance agents, well functioning Panchayats, Village Knowledge Centres, Agri Clinics / Agri Business Centers, Krishi Vigyan Kendras and KVIC / KVIB units, and individuals as Business Facilitators depending on the comfort level of the bank, for providing facilitation services. However, Directors of the UCB and their relatives (as defined in Para 2.2.7 of our Master Circular dated July 1, 2010 on Exposure Norms and Statutory/Other Restrictions) as also serving employees of the UCB are not eligible to act as Business Facilitators. The facilitation services may include: (i) identification of borrowers and fitment of activities; (ii) collection and preliminary processing of loan applications including verification of primary information / data; (iii) creating awareness about savings and other products and education and advice on managing money and debt counselling; (iv) processing and submission of applications to UCBs; (v) promotion and nurturing Self Help Groups / Joint Liability Groups; (vi) post-sanction monitoring; (vii) monitoring and handholding of Self Help Groups / Joint Liability Groups / Credit Groups / others; and (viii) follow-up for recovery.

4.2 Where individuals are engaged as Business Facilitators, adequate precautions need to be taken and proper due diligence conducted. However, Directors of the UCB and their relatives (as defined in [Para 2.2.7](#) of our Master Circular No. 1 dated July 1, 2010 on Exposure Norms and Statutory/Other Restrictions) as also serving employees of the UCB are not eligible to act as Business Facilitators.

Business Correspondent Model: Eligible Entities and Scope of Activities

5.1 Under the "Business Correspondent" (BC) Model, NGOs / MFIs set up under Societies / Trust Acts, Co-operative Societies registered under Mutually Aided Co-operative Societies Acts or the Co-operative Societies Acts of States, other than primary / co-operative credit societies, Post Offices, retired bank employees, ex-servicemen, retired teachers, retired government employees, individual kirana / medical / fair price shop owners, Individual Public Call Office (PCO) operators, agents of small savings schemes of Government of India / Insurance Companies, individuals who own petrol pumps, authorised functionaries of well run Self Help Groups (SHGs) linked to UCBs or any other individual including those operating Common Service Centres may act as BCs. However, Directors of the UCB and their relatives (as defined in Para 2.2.7 of our Master Circular No.1 dated July 1, 2010 on Exposure Norms and Statutory/Other Restrictions) as also serving employees of the UCB are not eligible to act as Business Correspondents. UCBs may also engage companies registered under Section 25 of the Companies Act, 1956 provided that the companies registered under Section 25 are stand-alone entities or Section 25 companies in which NBFCs, banks, telecom companies and other corporate entities or their holding companies do not have equity holdings in excess of 10 per

cent. If UCBs in North Eastern Region intend to engage as BCs any other organization / association not falling under any of the above categories of BCs, they may, after due diligence, approach the Regional Office of Reserve Bank of India at Guwahati for approval. UCBs are also permitted to allow, with suitable and adequate safeguards, the BCs in the North Eastern Region to account for the transactions in the Bank's books latest by the end of the second working day from the date of the transaction.

5.2 In addition to activities listed under the BF Model, the scope of activities to be undertaken by the BCs will include (i) disbursement of small value credit, (ii) recovery of principal / collection of interest (iii) collection of small value deposits (iv) sale of micro insurance / mutual fund products / pension products / other third party products and (v) receipt and delivery of small value remittances / other payment instruments.

5.3 The activities to be undertaken by the BCs would be within the normal course of the bank's banking business, but conducted through the entities indicated above at places other than the bank premises. Accordingly, in furtherance of the objective of increasing the outreach of the banks for micro finance, in public interest, the Reserve Bank permits banks to formulate a scheme.

5.4 The arrangements with the BCs shall specify :

- (a) suitable limits on cash holding as also limits on individual customer payments and receipts,
- (b) the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or next working day, and
- (c) all agreements / contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF / BC.

5.5 With a view to ensuring adequate supervision over the operations and activities of the BCs by UCBs, every BC will be attached to and be under the oversight of a specific bank branch to be designated as the base branch. The distance between the place of business of a BC and the base branch should not exceed 30 kms in rural, semi-urban and urban areas and 5 kms in metropolitan centres. While engaging BCs, UCBs may ensure that the area covered by them is strictly within their eligible area of operation.

5.6 UCBs may conduct thorough due diligence of the entities proposed to be appointed as BCs and also institute additional safeguards as may be considered appropriate to minimize the agency risk keeping in view the indicative parameters given in [Annex](#). In engaging intermediaries as BCs, UCBs should ensure that they are well established, enjoying good reputation and having the confidence of the local people. UCBs may ensure that the individuals engaged as BCs are permanent residents of the area in which they propose to operate as BCs and also include additional safeguards as may be considered appropriate to minimize agency risk. UCBs may give wide publicity in the locality about the intermediary engaged by them as BC and take measures to avoid being misrepresented.

5.7 In case, the duly appointed BCs of UCBs desire to appoint sub-agents at the grass-root level to render the services of a BC, UCBs have to ensure that: (i) the sub-agents of BCs fulfill all relevant criteria stipulated for BCs in terms of the guidelines; (ii) the BCs appointed by them carry out proper due diligence in respect of the sub-agent to take care of the reputational and other risks involved; and (iii) the distance criterion of 30 kms. / 5 kms, as applicable, from the base branch should invariably be fulfilled in the case of all sub-agents. Further, where individuals have been appointed as BCs, they cannot in turn appoint sub-agents.

Service Charges and Payment of Commission / Fees for engagement of Business Correspondents / Business Facilitators

6.1 To ensure viability of the BC model, UCBs (and not BCs) are permitted to collect reasonable service charges from the customer, in a transparent manner under a board-approved policy. Considering the profile of the clientele to whom banking services are being delivered through the BC model, UCBs should ensure that the service charges / fees collected from the customer for delivery of banking services through the BC model are not only fair and reasonable but also seen to be so. A copy of the Board-approved policy in this regard may be forwarded to the concerned Regional Offices of Urban Banks Department, Reserve Bank of India. UCBs should ensure that there are no complaints from the customers about the charges being non-transparent / not reasonable. Any unfair practices adopted by UCBs in this regard would be viewed seriously by Reserve Bank of India.

6.2 UCBs may pay reasonable commission / fee to the BFs / BCs, the rate and quantum of which may be reviewed periodically. [Paragraph 18](#) of Master Circular UBD. PCB. MC.No. 11 / 13.01.000 / 2010-11 dated July 1, 2010 on interest rates on rupee deposits may be treated as modified to that extent. The agreement with the BFs / BCs should specifically prohibit them from charging any fee to the customers directly for services rendered by them on behalf of the bank.

Redressal of Grievances in regard to Services rendered by BFs / BCs

7.1 UCBs should constitute Grievance Redressal Machinery within the bank for redressing complaints about services rendered by BFs and BCs and give wide publicity about it through electronic and print media. The name and contact number of designated Grievance Redressal Officer of the bank should be widely publicized and also placed in public domain. The details of the grievance redressal officer should be displayed at the premises of the BC and also at the base branch. The designated officer should ensure that genuine grievances of customers are redressed promptly.

7.2 The grievance redressal procedure of the bank and the time frame fixed for responding to the complaints should be placed on the bank's website.

7.3 If a complainant does not get satisfactory response from the bank within 60 days from the date of lodging the complaint, he/she will have the option to approach the Office of the Banking Ombudsman (in case the complaint is against scheduled UCBs) or concerned Regional Offices of Urban Banks Department, RBI for redressal of grievances.

Compliance with Know Your Customer (KYC) Norms

8. Compliance with KYC norms will continue to be the responsibility of UCBs. Since the objective is to extend savings and loan facilities to the underprivileged and unbanked population, UCBs may adopt a flexible approach within the parameters of guidelines issued on KYC from time to time. In addition to introduction from any person on whom KYC has been done, UCBs can also rely on certificates of identification issued by the intermediary being used as Business Correspondent, Block Development Officer (BDO), head of Village Panchayat, Post Master of the post office concerned or any other public functionary, known to the bank.

Other Terms and Conditions for Engagement of BFs and BCs

9.1 As the engagement of intermediaries as BFs / BCs involves significant reputational, legal and operational risks, due consideration should be given by UCBs to those risks. They should also

endeavour to adopt technology-based solutions for managing the risk, besides increasing the outreach in a cost effective manner.

9.2 The implementation of the BF / BC model should be monitored closely by controlling authorities of UCBs, who should specifically look into the functioning of BFs / BCs during the course of their periodical visits to the branches. UCBs should also put in place an institutionalized system for periodically reviewing the implementation of the BF / BC model at the Board level.

9.3 In order to achieve greater penetration of banking service, UCBs may scale up their efforts substantially towards educating their clientele through various means - print, electronic etc., in their respective vernacular languages regarding the benefits of banking habit, the role of the BCs and their obligation towards the customers and give wide publicity about implementation of the BC model by them.

9.4 Information regarding BCs engaged by UCBs may be placed on the respective UCBs' websites. The Annual Report of the UCBs should also include the progress in respect of extending banking services through the BC model and the initiatives taken by UCBs in this regard.

9.5 For streamlining cash management, UCBs may consider adopting 'Cash Routes' (linking various BCs, which are in close proximity to each other to a base branch) wherever warranted with suitable cash transit insurance.

9.6 UCBs should ensure the preservation and protection of the security and confidentiality of the customer information in the custody or possession of the BCs.

9.7 UCBs may consider bearing the initial set up cost and other costs of the BCs and extend a handholding support to the BCs, at least during the initial stages. UCBs may consider providing reasonable temporary overdrafts to the BCs.

9.8 UCBs may develop suitable training modules in the local language/s, in order to provide proper attitudinal orientation and skills to the BCs.

9.9 UCBs may adhere to the extant RBI guidelines on adoption of appropriate technology as contained in the [Circular UBD.No. BPD \(PCB\) No. 2/09.18.300/2007-08 dated July 4, 2007](#), while implementing the BC model.

Yours faithfully,

(A. Udgata)
Chief General Manager-in-Charge

Encl : Annex

Annex

Indicative Parameters for Due Diligence of BFs/BCs

The due diligence on entities to be engaged as the Business Facilitator / Correspondent shall factor the key risks and other risks identified of different capacities of entities. Some of the indicative parameters for due diligence of MFIs/ other entities while considering agency / funding relationship with them are given below.

(A) Due diligence in case of NGO/ MFI

(a) Charter and Registration – The foremost would be to examine whether the charter and objectives of the MFI / NGO permit it to undertake the kind of activities proposed, especially if it is some form of financial intermediation.

(b) Presence in the area – MFI / NGOs with adequate presence in the area for a reasonable time period would be preferable, as they would have developed better networking and understanding of local conditions.

(c) Management and Governance Structure - Many NGO/ MFIs are almost solely driven by the founders. It is essential to examine the composition of the governing body of the entity to assess if it can function independent of the promoter and if there is a second tier of management.

(d) Manpower Quality and Retention Rates – The quality of manpower from the perspective of undertaking the new task needs to be assessed. If not available in sufficient number, plans of the MFI / NGO to strengthen their manpower through recruitment and training are to be considered.

(e) Social vs. Profit Orientation – Often MFI / NGOs are social service oriented, which may hamper undertaking a task like financial intermediation. This needs to be carefully assessed as the two are vastly different competencies.

(f) Accounting Systems – The accounting systems and methods need careful study, especially in case the MFI / NGO is being considered for acting as a financial intermediary.

(g) Secular and Social Orientation – The MFI / NGOs should preferably be nondiscriminatory on caste, gender, political affiliation and religious lines. While its work could focus of specific groups or communities; it should not have any negative discrimination. The commitment of the entity for catering to the unserved, poor, and disadvantaged sections including women, etc. may be seen.

(h) Assessment of Donors Partners and Peers – Assessment of the MFI / NGO by the donors, partners and peers would be a crucial input in assessing the capabilities of the MFI / NGO. This can be obtained from independent discussions with the donors, partners and peers and the government agencies connected with such programmes.

(i) Financial Reporting – The financial reporting of the MFI / NGO will indicate both the transparency and compliance to the laws of the land. It is to be seen whether there is consistency in financial reporting to the reporting authority, government, and donors etc.

(B) Due diligence in case of a SHG Federation like Societies under MACS

In the case of the federated structure, the strength of the federation would depend on the health of the constituent SHGs, as the financial assets would be with the members of SHGs. Hence, the due diligence parameters would be a little different from a typical MFI. Some parameters for rating a Federation could be as follows:

(a) Governance Related

(i) The federation should have a system of rating its constituent SHGs at periodic intervals, preferably six monthly. At least 75% of the SHGs should be rated on all the defined parameters.

(ii) The federation should be a registered body and have capacity to enter into legal obligations.

(iii) The federation should have a defined area of operation and have only primary SHGs as members.

(iv) The federation should have an elected board which should meet at regular intervals.

(v) The accounts of the federation should have been audited and placed before the General Body within 6 months of the closing of the accounting period.

(vi) The federation should have filed all the statutory returns before the appropriate authority.

(b) Finance Related

(i) The federation should be in operating profit from the thrift and credit operations.

(ii) The thrift collections at the SHG level should be at least 90% of the determined amount.

(iii) The share capital mobilization should not be in arrears.

(iv) The federation should demonstrate a repayment performance of 90% or more on a continuous basis.

(v) At least 95% of the Loan Assets should be in performing category.

(vi) The federation should have made adequate loan loss provisions.

(vii) The federation should have defined exposure norms for individuals and groups.

(c) Due Diligence in case of other entities

In case of entities other than MFIs and NGOs, a due diligence may have to be more rigorous. The important aspects which need to be seen are:

(i) details of incorporation and promoters,

(ii) details of management staff including qualifications, experience, other business activities, financial status, etc.

(iii) particulars of employee level expertise.

(iv) type of infrastructure available,

(v) financials position,

(vi) present business relationships and their status and

(vii) adherence to the various local rules and regulations.

CUSTOM UPDATES

Circular No.43/ 2010-Customs

F.No.528/53/2007-Cus (TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

229A, North Block, New Delhi-110001
6th December, 2010.

To,

All Chief Commissioners of Customs / Customs (Prev.).
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs / Customs (Prev.).
All Commissioners of Customs & Central Excise.
All Director Generals under CBEC.

Subject: - Anti Dumping Duty on parts/components of Compact Fluorescent Lamps (CFL) from China and Hong Kong as per Customs Notification No.138/2002-Customs dated 10.12.2002 – Regarding.

Sir / Madam,

It has been brought to the notice of the Board that Board's letter dated 25.10.2007 issued vide F.No. 528/53/2007-Cus (TU) is being interpreted wrongly to mean that anti-dumping duty would not be imposed on CFLs if they are imported in CKD/SKD condition either together or in part shipments.

2. The matter has been examined by the Board. It is observed that the Board's letter dated 25.10.2007 (referred above) clarified that anti dumping duty on CFLs imported from Peoples Republic of China and Hong Kong was not leviable/recommended on parts/components of CFLs but only on complete CFLs as mentioned in the relevant Notification No.138/2002-Cus dated 10.12.2002. This was based on a clarification issued by the Directorate General of Anti Dumping and Allied Duties (DGAD) and was necessitated because of reports of confusion whether such duty is also levied on parts/components. However, it is now learnt that the said clarification in respect of parts/components of CFLs is being wrongly extended to import of CFLs in CKD/SKD condition.

3. In this regard, it is observed that Rule 2(a) of the General Interpretative Rules is relevant for the purpose of classification of goods imported in CKD/SKD condition. In terms of the said Rule 2(a), any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled. Thus, when any article such as CFL is imported in CKD/SKD condition, its classification for purpose of assessment would be done as complete or finished article in terms of the said Rule 2(a). Accordingly, when anti-dumping duty is attracted on any article then it is also to be levied if the said article is imported in CKD/SKD condition either together in one lot or in part shipments.

4. All pending assessments, if any, may be finalized accordingly.
5. Difficulty faced, if any, may be brought to notice of the Board.

Yours faithfully,

(G. S. Sinha)

VIKAS GUPTA

SERVICE TAX UPDATES

Circular No. 131/ 13/ 2010 – ST

F.No.356/13/2010-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

North Block, New Delhi
7th December 2010

To

Chief Commissioners of Central Excise and Service Tax (All),
Director General (Service Tax),
Director General (Central Excise Intelligence),
Director General (Audit),
Commissioners of Service Tax (All),
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

Subject: - Electricity meter installed in consumers' premises and hire charges collected – whether covered under exemption for transmission and distribution of electricity – reg.

A doubt has been raised whether renting of electricity meter by a service provider rendering the service of transmission or distribution of electricity, is covered by the exemption available under Notification No. 11/2010-ST dated 27.02.2010 and/ or 32/2010-ST dated 22.06.2010.

2. The matter has been examined. It is a general practice among electricity transmission (TRANSCO) / distribution companies (DISCOM) to install electricity meters at the premises of the consumers, to measure the amount of electricity consumed by them and 'hire charges' are collected periodically. Supply of electricity meters for hire to the consumers being an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notifications.

3. Trade Notice/Public Notice may be issued to the field formations accordingly.

4. Please acknowledge the receipt of this circular. Hindi version to follow.

(J. M. Kennedy)
Director, TRU
Tel: 011-23092634

IRDA
Circular

Ref:IRDA/F&I/CIR/GLD/202/12/2010

Date:08-12-2010

Policy Guidelines for Sharing of Information

The Authority is on periodic basis receiving requests from various Authorities both within India and outside the country for specific information regarding regulated entities in the insurance sector. Further, Section 20 of the Insurance Act, 1938 provides for sharing the information with various parties. These guidelines may please be noted.

As approved by Chairman, the Policy Guidelines have been put in place for Sharing of Information with various stakeholders. The provisions of Section 14 of the IRDA Act, 1999 have been invoked to issue the enclosed Circular on “Policy Guidelines for Sharing of Information” for compliance and necessary action.

(R. K. Nair)
Member (F&I)

Ref:IRDA/F&I/CIR/GLD/202/12/2010

December 08, 2010

CIRCULAR

Policy Guidelines for Sharing of Information

A. Introduction:

With the increasing integration with the international financial markets and the growing interest in the Indian insurance markets, there are requests for sharing and exchange of information between supervisors and other entities both in the insurance industry and other stakeholders in the financial markets. The request for information may emanate from both cross-border entities and from other regulators within the country.

The IRDA is frequently approached for provision/sharing of information on its regulated entities – both insurance companies (including the reinsurers) and intermediaries (including agents, brokers and other distribution channels). These requests may either be in the context of a crisis situation or on matters pertaining to day to day operations of entities supervised by the Authority.

This document lays down the policy framework for sharing of information sought by any outside agency both within India and jurisdictions outside India. While laying down the framework, it is necessary to underline the importance of maintaining a high standard of confidentiality in the information shared with other stakeholders.

B. Categorization of information sought:

Broadly, the information sought from the Authority can be segregated the following categories:

1. Information available in public domain;
2. Information not available in public domain:
 - a. Information which is considered to be confidential by the Authority; and/or
 - b. Information which could impinge on proprietary rights for commercial and other reasons.
3. Any information other than specified at (1) and (2) above.

Each of these aspects is dealt with separately as under:-

Information available in public domain:

The IRDA has laid down the prescriptions for disclosure of information. These disclosures include Returns required to be filed with IRDA at periodic intervals including monthly, quarterly, half-yearly and annual. In addition, disclosures are also required to be made in the public domain at the prescribed intervals. Broadly, the information available in public domain can be segregated into the following two categories:

- (a) Information available on the IRDA website/IRDA publications;
- (b) Information available on the respective entity's website/ its publicly available documents or available with any other statutory/public body.

In addition, once the insurance companies get listed, the disclosure made in the prospectus would also need to be compliant the prescriptions of the market regulator, Securities and Exchange Board of India, besides meeting the periodic disclosure requirements as laid down in the Listing Agreement.

The Authority has no concerns on sharing of information in the public domain, and would exercise either of the following two options in providing access to the said information:

- (a) Provide information available in the public domain; and
- (b) Provide details of the website/ other source of the information sought.

Thus, the applicant can be provided/ guided to the source of the said information.

II. Information not available in public domain:

The applicants seeking information from the IRDA may broadly be segregated into the following broad categories:

1. Information sought for carrying out statutory and regulatory purposes:
 - a. Information sought under section 20 of the Insurance Act, 1938;
 - b. Information sought by Domestic regulators, including the financial sector regulators such as Reserve Bank of India, Securities & Exchange Board of India, PFRDA and other statutory regulators;
 - c. Information sought by International Supervisors and Agencies; and
 - d. Various public authorities.

The information that can be sought under Section 20 of Insurance Act, 1938 is non-commercial and largely in public domain. All requests under this provision shall be examined to ensure that no information that can affect competition or stability of the company or the industry as a whole is shared.

In cases of (b) to (d) above, the requests for information would be individually examined to assess whether it is (a) shareable information; or (b) non-shareable information. The assessment on the share-ability of the information not available in the public domain would be guided by the following broad considerations:

- (a) Convincing reasons for the request made
- (b) Nature of information sought (not proprietary)
- (c) Maintenance of confidentiality of the information sought
- (d) Reciprocity of the requests made.

2. Information sought by other stakeholders:
 - a. Information sought under Right to Information Act; and
 - b. Information sought by others, including public at large.

The information sought under the RTI Act, 2005 is, governed by the framework laid down under the Act. More specifically, where information sought is commercial in nature and could have implications on proprietary rights/privacy the provisions of the said Act would be invoked to decline the request. Other information sought would in the normal course fall within the framework of (I) above, i.e., information available in the public domain. In other cases, the nature of information sought would be examined and would not be provided access to in cases where it may be commercial in nature and may impinge on the propriety/privacy rights.

C. Each case to be considered on merit:

Each request for the information sought would be considered on merit and decision on sharing of information would be taken. This is particularly pertinent since there may be

occasion when the information sought may be considered to be confidential for commercial or other reason, including access to information by the competitors. However, the Authority reserves the right to not share any information which could possibly impact the stability of its regulated entity - insurance company/intermediary; or the insurance sector as a whole.

(R. K. Nair)
Member (F&I)

VIKAS GUPTA

HIGH COURTS

Advance tax --Interest--
Company--**Assessment on book profits basis--No liability to pay advance tax--No interest leviable for default in payment of advance tax--**Income-tax Act, 1961, ss. 115J, 115JA, 207, 208, 234B, 234C-- *Binani Industries Ltd. v. CIT* (Cal) . . . 323

--Powers of High Court--**Point not raised before lower authorities cannot be considered by High Court--**Income-tax Act, 1961, s. 260A-- *CIT v. Chand Ratan Bagri* (Delhi) . . . 356

Business expenditure --Capital or revenue expenditure--**Lease rent paid to State Industrial Development Corporation for use of land for ninety-nine years--Registration of lease deed not relevant--Land not acquired by assessee--Payment made to carry on business--Lease rent deductible--**Income-tax Act, 1961, s. 37-- *Deputy CIT v. Sun Pharmaceuticals Ind. Ltd.* (Guj) . . . 479

Capital gains --Computation of capital gains--**Gains on transfer of intellectual property rights--Tribunal not justified in blindly applying B. C. Srinivasa Setty's case and concluding capital gains could not be computed--**Matter remanded--

Income-tax Act, 1961, ss. 45, 48-- *CIT v. P. R. Seshadri* (Karn) . . . 377

--Exemption --**Investment of net consideration in residential house--Fact that land was owned by assessee's spouse and she had used construction for mortgage purposes -- Not relevant--Finding that house had been constructed--Assessee entitled to benefit of section 54F--**Income-tax Act, 1961, s. 54F-- *CIT v. P. R. Seshadri* (Karn) . . . 377

Capital or revenue expenditure --**Fees paid to foreign company for designs and drawings and expenses on foreign technicians for training assessee's personnel--Expenditure for facilitating process of manufacture--Expenses incurred are revenue expenditure--**Income-tax Act, 1961-- *CIT v. Munjal Showa Ltd.* (Delhi) . . . 449

Deduction of tax at source --Certificate for non-deduction -- **Assessee claiming income was exempt under section 11 -- Amendment of section 2(15) w.e.f. 1-4-2009 not challenged--Union of India not impleaded as a party -- Effect of amendment of section 2(15) could not be considered -- Refusal to issue certificate for non-deduction of tax at source -- Justified --**Income-tax Act, 1961, ss. 2(15), 11, 197-- *Infoparks*

Kerala v. Deputy CIT (Ker) . . . 404

Depreciation --Plant--Poultry sheds--**Building specifically designed with a view to protecting birds from disease--Building designed proper and scientific feeding arrangement, proper water system, proper arrangement for collection of manure and droppings, proper arrangement for medication and vaccination--Building specifically designed to further the cause of manufacture or production--Is plant--Entitled to depreciation and investment allowance--**Income-tax Act, 1961, s. 43(3)-- *CIT v. Shivalik Hatcheries P. Ltd.* (HP) . . . 432

Exemptions --Educational institution--Registered society running schools--**Society granted exemption under section 10(23C) up to assessment year 2001-02--Law applicable--Effect of amendment of section 10(23C)--Condition regarding application of funds--Applicability of condition--Exemption already being granted could not be refused for assessment years 2002-03 to 2004-05--**Income-tax Act, 1961, s. 10(23C)(vi)-- *Digember Jain Society for Child Welfare v. Director General of Income-tax (Exemptions)* (Delhi) . . . 459

Export --Special deduction under section 80HHC--**Computation of export turnover--Freight and insurance not includible in export turnover**--Income-tax Act, 1961, s. 80HHC-- *CIT v. King Metal Works (Bom)* . . . 426

---Special deduction under section 80HHC--**Computation of special deduction--Meaning of profits of business--Entire sale consideration on transfer of DEPB credit assessable under section 28(iiid)**--Income-tax Act, 1961, ss. 28, 80HHC-- *CIT v. King Metal Works (Bom)* . . . 426

Income from undisclosed sources -- **Additions to income on basis of admission by assessee and consideration of material on record--Deletion of addition without adequate consideration--Not valid**--Matter remanded--Income-tax Act, 1961--*CIT v. Swastik India (Karn)* . . . 473

Industrial undertaking --Special deduction under section 80-IA--Condition precedent--**Manufacture of article--Meaning of "manufacture"**--**Conversion of limestone into limestone powder constitutes manufacture--Assessee entitled to special deduction under section 80-IA**--Income-tax Act, 1961, s. 80-IA-- *CIT v. Janak Raj Bansal (HP)* . . . 417

---Special deduction under section 80-IB--

Condition precedent--**Manufacture of article--Meaning of manufacture--Process of making transformer core from cold rolled coils amounts to "manufacture"**--**Assessee entitled to special deduction under section 80-IB**--Income-tax Act, 1961, s. 80-IB-- *CIT v. Alfa Lamination (Guj)* . . . 348

Industrial undertaking in backward area --Special deduction--**Finding that industrial undertaking was situated in district notified as a backward area--Assessee entitled to special deduction under section 80HH**--Notification No. S. O. 165(E), dated December 19, 1986--Income-tax Act, 1961, s. 80HH-- *CIT v. Guffic Chem P. Ltd. (Karn)* . . . 470

Loss -- Short-term capital loss -- **Forfeiture of amount paid towards convertible warrants--Loss deductible as short-term capital loss**--Income-tax Act, 1961--*CIT v. Chand Ratan Bagri (Delhi)* . . . 356

Non-resident --**Income deemed to accrue or arise in India--Royalty--Agreement between Indian company and foreign company for supply of plant know-how and product know-how--Agreement concluded and data delivered abroad--Purchase of drawings and documents abroad--Transaction was one of**

sale--No income could be deemed to accrue or arise to non-resident--Income-tax Act, 1961, s. 9(1)(vi)-- *CIT v. Maggronic Devices P. Ltd. (HP)* . . . 442

Penalty -- Concealment of income -- Search and seizure -- **Additional income offered by assessee and assessed on estimate--Levy of penalty not permissible without detailed discussion of documents and explanation for offer of additional income**--Income-tax Act, 1961, s. 271(1)(c)-- *CIT v. Suresh Chand Bansal (Cal)* . . 330

Reassessment --Limitation--Law applicable--**Effect of amendment of section 143 w.e.f. 1-4-1989--Return filed on 24-1-2003 in response to notice under section 148--No notice issued under section 143(2) but assessee having opportunity to be heard--Order of reassessment passed on 26-3-2004--Barred by limitation**--Income-tax Act, 1961, ss. 143, 148--Circular No. 549 dated 31-10-1989-- *CIT v. Deep Baruah (Gauhati)* . . . 362

---Notice--Notice beyond four years--Condition precedent--**Failure to disclose material facts necessary for assessment--Facts relating to sale of shares disclosed and assessment after enquiry--Notice after four years on ground**

that transaction not genuine--Notice not valid--Income-tax Act, 1961, ss. 147, 148-- Smt. Raj Rani Gulati v. Union of India (All) . . . 370

---Notice--Oral direction not to proceed with enquiry--Enquiry without affording an opportunity to assessee--Assessment order set aside--Matter remanded--Income-tax Act, 1961, ss. 147, 148-- Vira Properties (Madras) Pvt. Ltd. v. Asst. CIT (Mad) . . . 389

---Writ--Writ court cannot consider facts--Return submitted by assessee--Survey showing undisclosed income--Notice of reassessment was valid--Income-tax Act, 1961, ss. 147, 148--Constitution of India, art. 226-- Dr. Lata Chouhan v. ITO (MP) . . . 400

Rectification of mistake -- Mistake apparent from record--Search and seizure--Refund--Interest on refund--Assessee entitled to interest--Assessee to seek rectification --Income-tax Act, 1961, ss. 132, 154-- CIT v. Sri Krishna Saraf (Mad) . . . 342

Search and seizure -- Addition on account of documents found at premises of a relative of assessee--Investment in purchase of car and interest--Tribunal remanding the matter to Assessing Officer--Findings of fact--Income-tax Act, 1961, s.

158BFA(1)-- CIT v. Harjit Singh (P&H) . . . 422

---Search at premises of third person--Seizure and recovery from safe deposits belonging to assessee--Issue of notice under section 142(1) after search revealing search having nexus with assessee--Assessment under section 143(3)--Assessee entitled to seek necessary relief under section 132B(4)--Income-tax Act, 1961, ss. 132, 132B(4), 143-- CIT v. Sri Krishna Saraf (Mad) . . 342

Undisclosed stock -- Books of account incomplete at time of survey--Finding of Commissioner (Appeals) and Tribunal that stock related to import purchases verifiable from customs records--Accounts reconciled later--Finding of fact--Income-tax Act, 1961-- CIT v. Forech India Ltd. (Delhi) . . . 336

Unexplained investment -- Assessee purchasing demand drafts and remitting to a party--No proof that sum represented bad debt or business loss--Addition as unexplained investment--Justified--Income-tax Act, 1961, s. 69-- Satish Kumar v. CIT (P&H) . . . 396

Wealth-tax --Company--Exemption--Asset used for business--Land used for internal roads and playground--Not entitled to exemption--Wealth-tax

Act, 1957--Finance Act, 1983, s. 40(3)(vi)-- Motwane Manufacturing Co. Pvt. Ltd . v. CWT (Bom) . . . 413

Constitution of India :

Art. 136 --Precedent--Supreme Court--One-line order of Supreme Court dismissing appeal after it is admitted and heard--Binding-- Binani Industries Ltd. v. CIT (Cal) . . . 323

S. 48 --Capital gains--Computation of capital gains--Gains on transfer of intellectual property rights--Tribunal not justified in blindly applying B. C. Srinivasa Setty's case and concluding capital gains could not be computed--Matter remanded-- CIT v. P. R. Seshadri (Karn) . . . 377

S. 147 --Constitution of India, art. 226--Reassessment--Writ--Writ court cannot consider facts--Return submitted by assessee--Survey showing undisclosed income--Notice of reassessment was valid-- Dr. Lata Chouhan v. ITO (MP) . . . 400

Advance tax --Interest--Entire income of non-resident liable to deduction of tax at source--No interest chargeable--Income-tax Act, 1961, ss. 195, 234B-- Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi) . . . 722

Business expenditure --
Assessee marketing fertiliser--Insurance premium created for welfare of farmers who purchased fertiliser--Has nexus with assessee's business--Allowable--
Income-tax Act, 1961, s. 37-- *Asst. CIT v. KRIBHCO (Delhi)* . . . 686

---Prior period expenses--
Expenses allowed in original assessment--No reasons given for disallowance--
Disallowance to be deleted--Income-tax Act, 1961, s. 37-- *Deputy CIT v. Pasupati Spinning and Weaving Mills Ltd. (Delhi)* . . . 689

Business income --
Technical services--
Carrying out work giving rise to business income--Not a case of making available technical knowledge--Income-tax Act, 1961, s. 9(1)(vii), Explan. 2-- *Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi)* . . . 722

Capital gains --
Depreciable assets--**Sale of asset forming part of block--If after crediting sale proceeds written down value of block reduced not to be taxed separately--If written down value of block exceeded profit to be taxed as short-term capital gains --**Income-tax Act, 1961, s. 50-- *Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi)* . . . 722

Capital or revenue receipt
--Foreign exchange

fluctuation--**Profit or loss arising out of capital asset is capital receipt--If arising out of trading business, trading receipt--** *Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi)* . . . 722

Double taxation relief --
Assessee having only current account in India--Interest arising out of bank accounts in U. K.--To be excluded--Double Taxation Avoidance Agreement between India and the U. K., art. 12(2)-- *Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi)* . . . 722

Income --**Expenditure incurred in relation to income not forming part of total income --**
Disallowance--Deduction of income derived by co-operative society under section 80P--Not a case of "exempt income" but of "deduction from income"--Section 14A not applicable--Income-tax Act, 1961, ss. 10, 14A, 80P-- *Asst. CIT v. KRIBHCO (Delhi)* . . . 686

Income-tax --General principles--**Corporate entity is single entity--Assessee not bound to file tax audit reports for each separate business--**Income-tax Act, 1961, s. 44AB-- *Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi)* . . . 722

Income-tax Department --
Taking view that contract not one for rendering service for purpose of certificate of nil deduction of tax at

source--Not entitled to take contrary stand in assessment where no change in facts-- *Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi)* . . . 722

Non-resident --**Agreement for erection, commissioning, supervision, operation and maintenance of power plants--Activities carried on through permanent establishment--**
Operation involving huge costs--No technical knowledge made available nor activity ancillary or subsidiary to enjoyment of right, property or information--Income not fees for technical services or royalty but business income--**Not to be taxed on gross basis--Deduction of expenses of permanent establishment allowable--**
Assessee protected by "non-discrimination" clause in Double Taxation Avoidance Agreement--Assessee entitled to set-off of both unabsorbed depreciation and unabsorbed loss--Income-tax Act, 1961, ss. 9(1)(vii), Explan. 2, 44AB, 44D, 90(2), 115A--Double Taxation Avoidance Agreement between India and the U. K., arts. 7, 12(2), 13, 26--Circular No. 202 dated July 5, 1976-- *Rolls Royce Industrial Power Ltd. v. Asst. CIT (Delhi)* . . . 722

---**No claim for special deduction under section 80HHC in original**

assessment because of absence of business income--Reassessment withdrawing deductions--Business income arising as a consequence--Assessee entitled to claim special deduction under section 80HHC in reassessment proceedings--Income-tax Act, 1961, ss. 80HHC, 147-- *ITO v. Tamilnadu Minerals Ltd.* (Chennai) . . . 698

---Validity--Reopening on ground objection raised by audit--Assessing Officer satisfied with details furnished by assessee in original assessment--Reassessment on change of opinion--Not valid--Income-tax Act, 1961, ss. 143(3), 147-- *Deputy CIT v. Pasupati Spinning and Weaving Mills Ltd.* (Delhi) . . . 689

Income-tax Act, 1961 :

S. 10 --Income--Expenditure incurred in relation to income not forming part of total income --Disallowance--Deduction of income derived by co-operative society under section 80P--Not a case of "exempt income" but of "deduction from income"--Section 14A not applicable-- *Asst. CIT v. KRIBHCO* (Delhi) . . . 686

SUPREME COURT

Foreign exchange --Adjudication--Notice to show cause why enquiry should not be conducted--Noticee not entitled to copies of

documents not relied on by adjudicating authority --Foreign Exchange Management Act, 1999, s. 16--Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, r. 4(1)-- *Kanwar Natwar Singh v. Directorate of Enforcement* . . . 301

HIGH COURTS

Bank --Enforcement of security interest--Securitisation and reconstruction company--Assignment of debts due to bank to securitisation and reconstruction company--Securitisation and reconstruction company can be substituted in place of bank before Debts Recovery Tribunal--Recovery of Debts Due to Banks and Financial Institutions Act, 1993--Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ss. 2, 5, 10-- *Alpha and Omega Diagnostics India Ltd. v. Asset Reconstruction Company (I) Ltd.* (Bom) . . . 279

Securities and Exchange Board of India --Powers--To regulate securities market and take necessary measures--Wide--Chartered accountants--Statutory auditors of listed company--Information that company had inflated revenues showing artificial cash and bank balances--Show-cause notice to auditors of company--

Within jurisdiction of SEBI--Not an encroachment on powers of Institute of Chartered Accountants--Auditors are "persons connected with securities market"--Not an infringement of right to carry on trade or business--Chartered Accountants Act, 1949, ss. 8, 20, 21A, 24A--Companies Act, 1956, ss. 55A, 227--Securities and Exchange Board of India Act, 1992, ss. 11, 11B, 11C, 12A, 15HA--SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003, reglns. 2(c), 11--Constitution of India, art. 19(1)(g)-- *Price Waterhouse and Co. v. SEBI* (Bom) . . . 324

Winding up --Grounds for winding up--Inability to pay debts--Balance-sheet and report of chartered accountant indicating that company insolvent--Order to wind up company justified--Companies Act, 1956, s. 433(e)-- *Horizon Flora India Ltd. v. Assets Reconstruction Co. India Ltd.* (Bom) . . . 370

---Grounds for winding up--Inability to pay debts--Company admitting its liability in balance-sheet--Counter claim by company before Debts Recovery Tribunal not substantiated--No offer by company to deposit amount even by way of instalments--Poor financial position of company--Company

cannot be permitted to continue incurring liabilities--Company to be wound up--Companies Act, 1956, s. 433(e)--*Assets Reconstruction Co. India Ltd. v. Horizon Flora India Ltd.* (Bom) . . . 366

----Petition for winding up--Maintainability--Securitisation company--Assignee of debt due from company to bank is secured creditor--Has locus standi to file petition--Companies Act, 1956, s. 433(e)--Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, s. 2(za), (zd)--*Assets Reconstruction Co. India Ltd. v. Horizon Flora India Ltd.* (Bom) . . . 366

COMPANY LAW BOARD ORDERS

Oppression and mismanagement --Petition for relief--Family company--Non-inclusion of one group of shareholders in management of company--No implied right to family member to be on board of company--Articles of association vesting powers on board of directors to fill up office of director--Shareholders cannot claim directorship on basis of legitimate expectation--Company not functioning on quasi partnership basis--Past and concluded acts not to be interfered with--No proof of financial irregularities -- No case

of oppression of shareholders or mismanagement of company made out--Shareholders given dividends and bonus shares -- Cannot claim interest over property of company--Diversion of company declined--Petition filed with mala fide intentions -- Prayer to exit company not granted -- Companies Act, 1956, ss. 397, 398-- *G. Vijayalakshmi alias Brinda v. Tirupur Textiles P. Ltd.* . . . 375

HIGH COURTS

Burden of proof--Trade tax--Entries in Schedule--Burden to prove classification of product upon Revenue.--*Himani Limited v. Commissioner of Commercial Taxes, U. P. Lucknow* (All) P. 173

Declaration forms--Trade tax – Interest – Exemption -- Dealer claiming exemption on certain sales against form IIIB in return not producing such forms during assessment proceedings or in appeal--Tax at normal rate to be treated as admittedly payable--Interest leviable from due date of return--No consideration of legitimate expectation, hope or bona fide belief--U. P. Trade Tax Act (15 of 1948), ss. 7, 8(1)--U. P. Trade Tax Rules, 1948, r. 25B ; Form IIIB.--*Commissioner, Trade Tax, U. P. v. Control Switch Gears Company Ltd.* (All) P. 130

Deduction--Sales tax--Trade discount--Deduction allowable only where discount allowed in invoices--Kerala General Sales Tax Rules, 1963, r. 9(a)--*Godrej & Boyce Mfg. Co. Ltd. v. State of Kerala* (Ker) P. 195

Entries in Schedule--Sales tax--Wireless transmission projectors--Taxable as a projector under entry 32 of First Schedule--Not as an electronic system under entry 55 or under residuary entry--Kerala General Sales Tax Act (15 of 1963), Sch. I, entries 32, 55, 177--*Godrej & Boyce Mfg. Co. Ltd. v. State of Kerala* (Ker) P. 195

Exemption--Sales tax--Deferment of tax--Units undertaking expansion--Industrial Policy of Government stating incentive allowable on increased production--Increased production to be based on actual production capacity, not installed capacity--Rule explaining that increased production to be over and above installed capacity--Repugnant to Policy--Invalid--Bihar Finance Act (5 of 1981), s. 23A--Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990, r. 3--Sales Tax Incentive Scheme, 1989--Industrial Policy Resolution of Bihar Government, 1989--*Kalyanpur Cement Ltd. v. State of Bihar* (Patna) P. 185

Limitation--Sales tax--
Penalty--Time extended
from one year to three
years by amendment--
Time to be reckoned
from date of detection of
offence, not from date of
inspection--Detection of
offence only after
verification of seized
material in light of
incriminating
circumstances found at
inspection--Order not
barred by limitation--
Kerala Value Added Tax
Act, 2003 (30 of 2004), s.
67(1)(l), prov. (as
amended by Finance Act,
2007).--St. Mary's Hotels
(P) Ltd. v. Intelligence
Officer, Squad No. 1,
Kottayam (Ker) P. 242

--Sales tax--Unauthorised
collection--Dealer paying
entry tax on entry of
motor vehicle into State--
Collecting sales tax on
sale thereof--Claim to set
off of entry tax--Not
ground for levy of
penalty for excess
collection of sales tax--
Orissa Sales Tax Act (14
of 1947), ss. 4, 5, 5A,
9B(3)(a)(ii)--Orissa Entry
Tax Act (11 of 1999), ss.
3, 4--Orissa Entry Tax
Rules, 1999, rr. 3, 18.--
Seetal Automobiles v.
Sales Tax Officer,
Bhubaneswar II Circle,
Bhubaneswar (Orissa) P.
209

Purchase tax--Sales tax--
Set-off--Purchase tax
paid on goods used in
manufacture of taxable
goods for sale in State--
Set-off against tax
payable "for any period"--
Purchase tax paid on
gold used in

manufacture of
"mangalsutra" an
exempt item--
Mangalsutra brought
within scope of set-off
by amendment with
effect from May 1, 1982--
Words "for any period"
retained--Set-off
permissible on
purchases made prior to
amendment--Bombay
Sales Tax Act (51 of
1959), s. 13AA ; Sch. A,
entry 30--Bombay Sales
Tax Rules, 1959, r. 42--I--
Notification No. STR-
1192/CR-49A, Taxation-1
dated May 1, 1992.--P. N.
Gadgil v. Commissioner of
Sales Tax, Maharashtra
State, Mumbai (Bom) P.
146

Recovery of tax--
Adjustment of security
deposit paid by firm
against recovery of
another firm--Adjustment
of refund due to firm
against liability of
another firm -- All
partners must consent--
Tamil Nadu General Sales
Tax Act (1 of 1959), s.
24(3)--Tamil Nadu General
Sales Tax Rules, 1959, r.
40.--G. Sivanandam v.
Commercial Tax Officer,
Nethaji Road Circle,
Madurai (Mad) P. 167

--Sales tax--Penalty--Writ
under Constitution--
Seizure of books and
documents pursuant to
shop inspection and
notices proposing
penalty--Writ petition--
Interim order permitting
authority to complete
proceedings and pass
final orders--Orders
passed appealed against
and appeal pending--

Recovery proceedings--
Writ petition--Dealer
relegated to pending
appeal--Direction to
appellate authority to
dispose of appeal and
representation for return
of books--Kerala Value
Added Tax Act, 2003 (30
of 2004), ss. 44, 46(1),
67(1)(l), prov.--Kerala
General Sales Tax Act (15
of 1963), s. 28(6)--Kerala
Taxes on Luxuries Act (32
of 1976), s. 13(6)--Kerala
Revenue Recovery Act (15
of 1968)--Constitution of
India, art. 226.--St. Mary's
Hotels (P) Ltd. v.
Intelligence Officer, Squad
No. 1, Kottayam (Ker) P.
242

Service tax--Road
maintenance and repair
services--Writs under
Constitution--Petition by
contractor doing road
maintenance work
challenging circular
dated February 23, 2009
pursuant to which
summons for production
of documents for period
from June 16, 2005 to
July 26, 2009 were
issued--Petitioner not
able to establish any
ambiguity in provisions
of Act--Issue premature--
Petition dismissed--
Finance Act (32 of 1994),
s. 65(105)(zzg)--
Notification No. 24/2009
dated July 27, 2009.--
Karvembu & Co. v. Under
Secretary to Government
of India, Department of
Revenue, Tax Search
Unit, New Delhi (Mad) P.
230

Transfer of right to use
goods--Trade tax--
Movable property--Air--

conditioning plant and cold storage plant--Finding that could be shifted from place to place--Lease of hotel with movable and immovable assets--Memorandum of agreement and lease agreement mentioning air-conditioning and cold storage plants separately as movable assets--Lease rent thereon taxable--U. P. Trade Tax Act (15 of 1948), s. 3F.--Jaiprakash Industries Limited v. Commissioner of Commercial Taxes, Uttarakhand, Dehradun (Uttara) P. 152

Writs under Constitution--Service tax--Road maintenance and repair services--Petition by contractor doing road maintenance work challenging circular dated February 23, 2009 pursuant to which summons for production of documents for period from June 16, 2005 to July 26, 2009 were issued--Petitioner not able to establish any ambiguity in provisions of Act--Issue premature--Petition dismissed--Finance Act (32 of 1994), s. 65(105)(zg)--Notification No. 24/2009 dated July 27, 2009.--Karvembu & Co. v. Under Secretary to Government of India, Department of Revenue, Tax Search Unit, New Delhi (Mad) P. 230

WEST BENGAL TAXATION TRIBUNAL

Commissioner--Revision--Sales tax--Additional Commissioner--Power to pass order ex parte to best of judgment--Duty to pass orders on questions of law--West Bengal Sales Tax Rules, 1995, r. 247.--S. Bhattacharjee & Co. v. Assistant Commissioner of Commercial Taxes, Corporate Division Kolkata P. 249

Deductions--Sales tax--Sale price--Taxable turnover--Discount given to dealer by manufacturer--Not to be added--Sales return--Value of goods returned in subsequent period to be deducted to extent tax paid on them in earlier period--Denial of deduction of entire sum representing sales return not justified--Matter remanded--West Bengal Sales Tax Act (49 of 1994), s. 2(31)--West Bengal Sales Tax Rules, 1995, r. 159.--S. Bhattacharjee & Co. v. Assistant Commissioner of Commercial Taxes, Corporate Division Kolkata P. 249

Sale price--Definition--Dealer in motor vehicles--Price fixed by manufacturer--After delivery, dealer arranging for registration, insurance and payment of road tax--Sums for registration, insurance and road tax collected from purchaser and paid by dealer--Not includible in sale price--West Bengal Sales Tax Act (49 of 1994), s. 2(30),

(31).--Auto Hitech (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Corporate Division P. 198

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

Penalty--Service tax--Assessee rendering service towards TDS for income-tax purpose and contributions to PF and ESI--Under bona fide belief that they were not liable to pay service tax--Penalty not leviable--Finance Act (32 of 1994), ss. 76, 78, 80.--Cosmos Detective and Security Services v. Commissioner of Central Excise, Ahmedabad (CESTAT--Ahd) P. 239

Service tax--Capital goods cenvat credit and service tax credit--Cellular mobile telephone service provider--Providing taxable service and exempted services such as "inter-connectivity/network access service", "roaming service", etc.--Restriction provided in rule 6(3)(c) applicable--But not to "capital goods credit" and the "service tax credit" in respect of 17 services referred to in rule 6(5)--No circumstances or evidence indicating "suppression of facts", misstatement, fraud, etc.--Extended period of limitation not available--Penalty not attracted--Finance Act (32 of 1994), ss. 65(105)(b), 78--Cenvat

Credit Rules, 2004, rr. 2(e), 6(3)(c), (5), 15(4).-- Idea Cellular Ltd. v. Commissioner of Central Excise, Rohtak (CESTAT--New Delhi) P. 217

SUPREME COURT

Excise duty --Appeal--Question of fact--**Bifurcation of factory into two separate units--Commissioner holding that exemption for each unit was available--Tribunal affirming decision of Commissioner--Finding one of fact--No question of law arises--Notification No. 6 of 2000-CE, dated 1-3-2000 as amended by Notification No. 36/2000-CE, dated 4-5-2000-- CCE v. Amaravathi S. V. Paper Mills Ltd. . . . 455**

HIGH COURTS

Customs duty --Mis-declaration--**Assessee obtaining licence by making false declaration and not fulfilling mandatory requirement of being manufacturer-exporter--No right conferred on assessee and hence assessee not plead equity--Imported goods liable for confiscation and assessee liable for penalty--Tribunal permitting clearance of goods on merit rate--To be set aside--Customs Act, 1962, ss. 111(o), 112(a)--Notification No. 48/99-Customs, dated 29-4-1999-- Commissioner of Customs v. Customs, Excise and Service Tax**

Appellate Tribunal (Mad) . . . 426

Excise duty --Cenvat credit--Additional excise duty--**Invoice issued by dealers not showing payment of additional excise duty on input--Assessee producing evidence to prove such duty paid on input and burden passed on to it by dealer--Denial of credit without looking at evidence produced--Set aside--Cenvat Credit Rules, 2002--Cenvat Credit Rules, 2004, r. 9(2)- Pearl Drinks Ltd. v. CCE (Delhi) . . . 449**

---Settlement of cases--**Provisions that application not to be filed unless show-cause notice issued on or before expiry of six months from seizure--Directory in nature and to be interpreted harmoniously--Application can be made after expiry of 180 days of seizure or after receipt of show-cause notice whichever is earlier--Central Excise Act, 1944, s. 32E(1)(b), (2)-- Director General of Central Excise Intelligence v. Murarilal Harishchandra Jaiswal P. Ltd. (Delhi) . . . 403**

Service tax --Works contract--Composition scheme--Classification of taxable services--**Relevant provisions of circular dated 1-1-2008 providing for disqualification from exercising option to pay tax at compounded rate where service tax paid in**

respect of works contract--In conformity with rule 3(3)--Petitioner paying tax on erection, commissioning, installation, industrial construction services, etc., prior to 1-6-2007 when "works contract service" introduced and required to pay balance thereafter in respect of such single composite contract filing writ petition and challenging provisions of circular--Petition dismissed--Benefit of scheme available only in relation to works contract service--Finance Act, 1994, ss. 65(105)(zzd), (zzq), (zzzh), (zzzza), 65A, 66, 93, 94--Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, rr. 2(c), 3(3)-- Nagarjuna Construction Company Ltd. v. Government of India (AP) . . . 458

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

Customs duty --Commissioner--Powers--Shipping bill--**Conversion of free shipping bills to drawback shipping bills--Commissioner has power under section 149 to convert free shipping bills to drawback shipping bills--Matter remanded--Customs Act, 1962, s. 149--Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, r. 12(1)(a)-- Midex Global P. Ltd. v. CCE (Mumbai) . . . 473**

Excise duty --Cenvat credit--Additional excise duty--Change of law--**Amendment made to rule 3 of 2004 Rules with retrospective effect granting Cenvat credit of additional excise duty (goods of special importance) paid on inputs--Assessee availing of credit of additional excise duty based on supplementary invoices issued by dealers--Invoices as well as supplementary invoices of dealers to be construed as issued under rule 11--Amendment made consciously to give retrospective effect to credit of additional excise duty--Penalty set aside--Cenvat Credit Rules, 2004, r. 3--Central Excise Rules, 2002, r. 11--*Britannia Industries Ltd. v. CCE* (New Delhi) . . . 445**

----Remission of duty--**Absence of order for remission of duty--Original authority not empowered to drop demand of duty otherwise payable in respect of goods manufactured, stored in factory premises and unaccounted for--Central Excise Rules, 1944, r. 57-1--*MFPL Flourine Products Ltd. v. CCE* (Chennai) . . . 479**

Service tax --Liability to tax--Extended period of limitation--Show-cause notice--Tour operator service--**Levy of service tax on tour operator service w.e.f. 1-4-2000--High Court upholding**

constitutional validity of levy of service tax--No notice issued for recovery of tax and imposition of penalty for period 1-4-2000 to 30-4-2001--Extended period of limitation not available to Department--Demand raised after expiry of normal period of limitation time-barred--Finance Act, 1994, ss. 73, 76, 77, 78--*Travel Aid v. Commissioner of Service Tax* (Chennai) . . . 469