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PREVENTION OF MONEY LAUNDERING ACT- BY SHRI PRADEEP K MITTAL-9811044365

- The officers of the Enforcement Directors under the Prevention of Money Laundering Act have authority to record statement of persons who are apprehended to be involved in commission of offence and such persons cannot claim constitutional guarantee of protection against self-incrimination under Article 20(3) of the Constitution of India. The statement so recorded can be relied upon against such persons unless they are retracted or given under duress or torture. **R. Subramanian Vs. The Assistant Director, Directorate of Enforcement MANU/TN/0973/2015.**

COMPETITION ACT- BY SHRI PRADEEP K MITTAL-9811044365

- The Hon'ble Competition Appellate Tribunal, while relying on Gullapalli Nageswara Rao and Others Versus Andhra Pradesh State Road Transport Corporation and anr. [1959] Supp 1 SCR 319 held that the very person/officer, who accords the hearing to the objector must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice. (In this case was heard by four members and the judgment was pronounced by six members)" **All India Organization of Chemists and Druggists Vs. Competition Commission of India MANU/TA/0022/2015**
- The Hon'ble Competition Commission of India held that the conduct of Opposite Party in increasing the number of floors, in demanding additional payments pursuant to increase in the super area and arbitrary cancellation of allotment is unfair within the meaning of section 4(2)(a)(i) of the Act. It further held that the during the progress of the project, the Opposite Party deceived the innocent buyers through false solicitations and promises. Thus, the Commission directed the Opposite Party (DLF Gurgaon Home Developers Private Limited) and its group companies operating in the relevant market to cease and desist from indulging in the conduct which is found to be unfair and abusive in terms of the provisions of section 4 of the Act. **Pankaj Aggarwal and Ors. Vs. DLF Gurgaon Home Developers Private Limited MANU/CO/0038/2015**

**COMPANIES ACT 1956/2013 - BY SHRI PRADEEP K. MITTAL-
9811044365**

- Under the contract emanating from his memberships, he is entitled to have his name entered and kept on the register of members, to vote at meetings of members, to receive dividends which have been duly declared, to exercise pre-emption rights conferred by the articles, and to have his capital returned in proper order of priority on a winding up or on a properly authorized reduction of capital. Under the general law he is entitled to restrain the company from doing acts which are ultra vires. In an action for violation of personal rights, a single shareholder suing alone and not even on behalf of other shareholders, may sue the company to obtain relief against such company. Where a wrong has been done to the company, the company is the only true plaintiff and is entitled to file a petition and not shareholder on behalf of the company. Starlight Real Estate Vs. Jagrati Trade Services (P) Ltd MANU/WB/0405/2015.
- When there is serious question of fact and law is involved in a petition under Section 111/111A of Companies Actg, 1956 (now Section 58 and 59 of Companies Act, 2013), CLB does not have jurisdiction to try and decide such petition and the petitioner be called upon to approach the Civil Court for the purpose of adjudication of their rights and titles to the shares as the jurisdiction of the CLB is summary jurisdiction in nature. Bihari Dalwani Vs. Prem Kutir Pvt. Ltd. 2014 (123) CLA 21 CLB.
- The Petitioner, though his name may not be registered as a member in the statutory records of the Company, yet, if he can demonstrate that he has unflinching and established right to the shares, he would qualify under Section 399 of the Companies Act, 1956 and would be entitled to file a petition U/s 397 and 399 of the Companies Act against oppression and mis-management, 1956 Pawan Kumar Budhiya Vs. JD Properties Pvt. Ltd. 2014(123) CLA 73 CLB.
- When the shares of the Company have not been listed at the stock exchanges and the Company failed to provide information to Chartered Accountant despite direction of the Division Bench of the High Court, it calls for investigation into the affairs of the Company and the Central Govt. is entitled to appoint inspectors to investigate into the affairs of the Company. T.Kannan Vs. Shapre Infotech India Ltd. 2014 (123) CLA 83 (Madras).
- In case there is a default on the part of the Company to make payment to the creditors without any valid and justified reasons, the winding up petition is maintainable and the Company cannot be heard to say that the Company is in sound financial position and should not be ordered to be wound up. Texmaco

Rail Engineering Ltd. Vs. ETA Engineering Pvt. Ltd. 2014 (123) CLA 91(Madras).

- When on a petition under Section 100 of Companies Act, 1956, the reduction of share capital does not envisage payment of any money to the shareholders, the creditors cannot be hard to raise objection about the reduction of share capital when the special resolution has been passed unanimously by the shareholders, the Petition U/s 100 of the Companies Act, 1956 is allowable. Contec Components Ltd. 2014 (123) CLA 99 (Madras).
- The CLB has power to set-side and terminate any agreement, in exercise of powers U/s 402 clause(e) of the Companies Act, 1956 if the CLB is of the view that the same is required for the purpose of removing the oppressive or prejudicial conduct of the Respondent as against the petitioners. When the parties have entered into an Agreement to sell and subsequent thereto, no sale deed has been executed, it cannot be said that there a concluded contract for sale of immovable property. Praveen PN Nahar Vs. Nahar Textiles Pvt. Ltd. 2014 (123) CLA 103. CLB.
- The Company appeal U/s 10F of the Companies Act, 1956 before the High Court, is maintainable only when the question of law arises in the appeal and not when the finding of facts have been arrived at by CLB which are based on evidence. Such appeal is liable to be dismissed. Vijay Kumar Tiwari Vs. CLB 2014 (123) CLA 125 Allahabad High Court.
- The petition cannot be dismissed on the allegation of suppression of material fact or delay in filing the petition unless the allegations are established. When it seen that the Petitioner was served with notice U/s 284 of the Companies Act for his removal and that too for valid reasons, the Petitioner cannot contend that he was not served with the notice and his removal is unjustified. Rajiv Bhingarde Vs. Kaizen Wheels Pvt.Ltd. 2014 (123) CLA 140 CLB.
- The Delhi High Court has observed that it is possible that notice in respect of action under S.560 of the Companies Act, 1956, was not sent to the registered office of the company. Consequently, the condition precedent for the initiation of proceedings to strike off the name of petitioner from the Register maintained by ROC was not satisfied. Since the petitioner is a running company; and that it has filed this petition within the stipulated limitation period of twenty years and also to the decision of the Bombay High Court in Purushottamdass and Anr. (Bulakidas Mohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra, & Ors. (supra); the name of the company be allowed to be restored. Looking to the fact that annual returns and balance sheets were not filed for almost sixteen years, the primary responsibility for ensuring that proper returns and other statutory documents are filed, in terms of the statute and the rules, remains that of the

management and ROC is well within its right to initiate action for non-compliance if any. Pancham Hotels (P) Ltd Vs. ROC MANU/DE/1535/2015.

- The Division Bench of Bombay High Court has held that the concept of free transferability would mean that the shareholder has the freedom to transfer his shares on terms defined by him, provided the terms are consistent with the Articles of Association as well as the Companies Act and Rules and other governing laws. The fact that the shares of a public company can be subscribed to by the public, unlike in the case of a private company, does not in any way whittle down the right of a shareholder of a public company to arrive at a consensual agreement/arrangement (either by way of sale, pledge, pre-emption etc.) with a third party or another shareholder, which is otherwise in conformity with the Articles of Association, the Companies Act and Rules, and any other governing laws. Bajaj Auto Ltd Vs. Western Maharashtra Development Corporation Ltd MANU/MH/0820/2015.

The CLB dismisses petition filed u/s 237 of Companies Act, 1956 ('Act') seeking investigation into affairs of respondent co., holds that petitioner had no locus-standi to file the extant petition, as it was not a shareholder, creditor, contributory, a person aggrieved or related in any manner to respondent Co. The petitioner was only a shareholder in the company which had advanced an unsecured loan, thus the creditor co. was the aggrieved party u/s 237, not the petitioner being a mere 'stranger'; The Sec.237 does not permit a 'fishing expedition' in the company's affairs and states the CLB ought to exercise powers on proper facts and circumstances considering its far-reaching consequences, which are absent in present case. Interprets phrase 'any other person(s)' in sec. 237 (relating to the eligibility to file petition u/s 237), states that it includes 'parties aggrieved' and not 'strangers' for filing such petition; CLB Mumbai (judgment available on CLB Website).

INCOME TAX CIRCULAR AND NOTIFICATION - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

[Important CBDT Directive On Applicability Of MAT To Foreign Cos And FIIs](#)
May 11th, 2015

- The CBDT has issued a letter dated 11th May 2015 on the issue of "Imposition of Minimum Alternate Tax (MAT) on foreign companies particularly FIIs". The CBDT has stated that in the light of the constitution of the Justice A. P. Shah Committee to look into the issue of applicability of MAT and the statement made by the Finance Minister on the issue in the Rajya Sabha, no coercive action should be taken for recovery of demand already raised. It is also stated that issue of fresh notices for reopening of cases and completion of

assessment should also be put on hold unless the case is getting barred by limitation.

[CBDT Chief Sends Clarion Call To Dept Top Brass For Widening Taxpayer Base](#)

May 11th, 2015

- Hon'ble Ms. Anita Kapur, Chairperson of the CBDT, has addressed a letter dated 8th May 2015 to the Principal Chief Commissioners, Director Generals etc pointing out that the number of existing income tax payers is low compared to the potential and that the gap between the potential and the actual tax payers appears to be wider in the case of tier-II cities and towns. Ms Kapur has stated that considering the priorities of the Government and the need to widen the tax base, a concerted and focused effort in mission mode is required. She has called upon the department to strive for adding at least 25 lakhs new assesses per month during the current financial year. She has also stated that the assessment and investigation charges have been the mainstay of the Department's efforts to widen tax base. She has directed the top brass to come prepared to present and discuss specific strategies for widening the tax base of each region and at national level and also to send a brief note on the suggested strategy. The officers have also been requested to forthwith focus their attention on this issue and deploy & activate the officers to achieve this goal

Procedure in response to arrear of demand

- The CBDT has issued Circular No. 8 of 2015 dated 14.05.2015 setting out the detailed procedure that has to be followed by taxpayers in response to an arrear demand from the AO. The Ministry of Finance has also issued a press release stating that the said Circular is because the Income Tax Department has taken note of grievances of taxpayers arising on account of outstanding tax demand which may be inaccurate due to non-reporting or delayed reporting of TDS by deductors leading to mismatch between the claim and data available with the Department, non-posting of challans, non-disposal of rectification applications, incorrect details of income or pre-paid taxes reported by taxpayer etc. It is emphasized that the Income Tax Department is committed to early and satisfactory resolution of taxpayers' grievances. It is also stated that about 95% of entries of Demand involve demand up to Rs. 1 lakh and about 90% of such assesseees are Individuals and HUFs. It is expected that majority of the grievances of small taxpayers can be redressed by following the procedure prescribed in the circular.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

- The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, as assented by the Hon'ble President on 26th May 2015 and as published in the Official Gazette, is now enforceable in India.
- The Act makes provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

CBDT Guidelines on computation of ALP through Range method

- The CBDT has issued a press release dated 21.05.2015 stating that the Finance (No. 2) Act, 2014 had amended the provision of Income-tax Act relating to transfer pricing regime. The purpose of amendment of section 92C (2) of the Act was to facilitate introduction of "range" concept for determination of Arm's Length Price of an international transaction or a specified domestic transaction. Further, use of multiple year data for comparability analysis for the purpose of transfer pricing was also to be incorporated. It is pointed out that the said use of multiple year data and "range" concept is proposed to be incorporated through amendments in the Income-tax Rules. For this purpose, the CBDT has prepared a draft outline of the said new regime to be incorporated in the Rules. The CBDT has requested all stakeholders and members of the general public to provide suggestions and comments by 31st May 2015.

No tds in case income is exempt u/s 10(26BBB)

- The CBDT has issued Circular No. 07 dated 23.04.2015 stating that the CBDT has decided that since corporations covered under Section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 i.e. unconditional exemption of income under Section 10 and no statutory liability to file return of income under Section 139, any corporation whose income is exempted under Section 10(26BBB) of the Act will also be entitled to the benefit of the said Circular. Hence there would be no requirement for tax deduction at source from the payments made to such corporations since their income is anyway exempted under the Act.

ITAT order relating to seeking adjournment and filling appeal paper book

- All applications for adjournment shall be filed at least three weeks in advance, except in exceptional cases for which reasons for filing them beyond that period

shall be clearly stated in the application. The application will be filed in duplicate and the copy served in advance on the opposite party. In case the opposite party writes “not opposed” on the application, it shall be taken up in Chamber, otherwise, all applications shall be listed before the Court along with the case. All applications shall clearly state the grounds on which adjournment is sought and shall be supported by an affidavit of the party seeking adjournment.

Henceforth all appeals filed in the Tribunal by the Department or assessee shall contain:

- (a) Index sheet clearly indicating the documents filed.
- (b) Appeal paper book shall be paged in continuation.

New Income Tax Return form notified for A.Y.2015-16

The ministry of Finance has issued a press release dated 31.05.2015 stating that New ITR Form 1,2, and 4S has been simplified for tax payer purpose.

The Gold Monetization Scheme

- The government on Tuesday released the draft guidelines for its ambitious gold monetization scheme that aims to cut down gold imports in the country. The guidelines have been notified nearly three months after the scheme was announced by Finance Minister Arun Jaitley in the Union Budget.

The salient features of the gold mobilization scheme:

- 1) The scheme is meant to mobilize gold held by domestic households and institutions. Gold collected through the scheme will be made available to jewelers for manufacturing of new jewellery and other items.
- 2) The scheme will initially be launched at a few places because the government will have to first set-up infrastructure for facilitating easy and secure handling of gold.
- 3) Gold collected from consumers will first be cleaned and measured at test centres; it would then be melted to test for purity. After the tests, consumers can either deposit the gold for a fee or take it back after paying a nominal fee.
- 4) The minimum quantity of gold that a customer can bring is proposed to be set at 30 grams.

- 5) Those willing to deposit the gold will be given a certificate mentioning the amount and purity of the deposited gold. Banks will open a 'Gold Savings Account' on the basis of such certificates.
- 6) Consumers will be paid interest on their gold savings account after 30/60 days of account opening. The amount of interest rate to be given is proposed to be left to the banks to decide.
- 7) Both principal and interest will be paid to the depositors of gold, will be 'valued' in gold. For example if a customer deposits 100 gms of gold and gets 1 per cent interest, then, on maturity he has a credit of 101 gms.
- 8) The customer will have the option of redemption either in cash or in gold, which will have to be exercised in the beginning itself (that is, at the time of making the deposit).
- 9) The tenure of the deposit will be minimum 1 year and in multiples of one year. Like a fixed deposit, breaking of locking period will be allowed.
- 10) Gold savings account will be exempt from capital gains tax, wealth tax and income tax.

According to the government, gold deposit accounts will utilise the 20,000 tonnes available within the country and help in cutting down the 800-1,000 tonnes of gold the country ships every year. The last day for submitting feedback on draft guidelines with the finance ministry is June 2.

CASE LAWS - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- **ASHWIN S. MEHTA vs. DEPUTY COMMISSIONER OF INCOME TAX, (2014) 41 CCH 0278 MumTrib:-** Identically in the case of Late Shri Harshad S. Mehta vs. DCIT in I.T.A. No. 3699/Mum/2010 (Assessment Year: 1994-95) order dt. 29/10/2014, the Tribunal allowed the appeal of the assessee for statistical purposes. In the aforesaid order dt. 29/10/2014, identical grounds were raised by the assessee and the entire issue revolved around principle of natural justice and not determining the income based on final books of accounts. The books were rejected by the Revenue authorities. In the present appeal also identical grounds had been raised, therefore, following the reasoning contained in the aforesaid order and the facts available it was held that the books had been rejected by the department on flimsy grounds without independently examining each and every entry and confronting specific discrepancy, if any, to the assessee. In the aforesaid order the Bench had already considered the earlier decisions also, therefore, keeping in view the totality of facts the Id. Assessing Officer is directed to verify/examine each and every entry in the books of

accounts as discussed in the aforesaid order dated 29/10/2014. Shri Harshad S. Mehta vs. DCIT in I.T.A. No. 3699/Mum/2010 (Assessment Year: 1994-95) order dt. 29/10/2014, followed.

- **SALMAN KHAN vs. ASSISTANT COMMISSIONER OF INCOME TAX, (2014) 40 CCH 0594 MumTrib;**- Where there is no finding that the particulars furnished by the assessee in its return were inaccurate or erroneous or false, there is no question of imposing penalty u/s 271(1)(c) of the act merely because the claim of the assessee for deduction was disallowed in quantum proceedings.
- **ASSISTANT COMMISSIONER OF INCOME TAX vs. DIVINE (INDIA) INFRASTRUCTURE PVT. LTD. (2014) 42 CCH 0022 DelTrib;**- Where assessee provides details pertaining to alleged share application money contributors, then mere non-production of lenders/shareholders cannot be a ground for making addition u/s 68, without establishing that evidence filed by assessee was false by bringing new adverse material on record.

International taxation and Transfer Pricing

- **AGNITY INDIA TECHNOLOGIES P. LTD. Vs. DEPUTY COMMISSIONER OF INCOME TAX, (2015) 44 CCH 0139 DelTrib;**- Companies which are full-fledged risk bearing companies and are functionally dissimilar cannot be selected as comparables to assessee who is a captive software service provider

JCB India Ltd vs DCIT, 44 CCH, 118, Delhi ITAT

TTWhere there was no new technology then royalty payments made to foreign company by assessee was rejected.

DCIT vs INNODATA ISOGEN INDIA PVT LTD., (2015) 44 CCH 0091 DelTrib

When the assessee's operating margins falls within (+1-) 5% of the arithmetical mean of comparable prices, it was rightly held that the assessee's International Transactions with its associated enterprises during the year to be at Arm's Length and therefore the addition of Rs.4,34,12,348/- made to the price of international transaction was ought to be deleted.

ROYAL JORDANIAN AIRLINES vs. DEPUTY DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION), 119 ttj 0145

Assessee having admittedly incurred loss in the relevant assessment year, provisions of s. 44BBA will not, per se, apply and no income can be computed under that section.

CORPORATE LAWS –BY SHRI PRADEEP K. MITTAL-9811044365

- Mere pendency of arbitration proceedings is not a ground to reject petition for winding up. Surendra Constructions (P) Ltd. Vs. M Venkata Rao Infra Projects (P) Ltd. (2015) 125 CLA 546 (T& AP).
- Petition filed before the Company Law Board within 3 years from the date of refusal is within limitation and the petition is maintainable where there are no complicated questions of facts and law. Ms. Farida Ayub Khan Vs. Mehboob Productions (P) Ltd. and Ors. (2015) 125 CLA 529 (CLB).
- The Division Bench of Punjab & Haryana High Court has held that when the company is in liquidation and whose assets is sought to be sold by the asset management company in exercise of the powers under the SECURITISATION ACT, to realize its debts, the approval of the Company Judge (whose supervision the company in liquidation is), would be necessary and dismissed the appeal – although the Advocate for the appellant has contended that as Securitisation Act and as per Division Bench judgment of Delhi High Court, no approval of Company Judge is required, the Punjab & Haryana High Court has held that they are bound by its own previous judgment in the case of Haryana State Industrial Infrastructure Ltd Vs. Haryana Concast Ltd. UV Asset Reconstruction Co Ltd Vs. Pashupati Haryana Woollen Ltd MANU/PH/0985/2015.
- The Punjab & Haryana High Court has held that the tenant of the immovable property, which has been acquired and sought to be possessed by the secured by bank in exercise of the powers under Section 13(4) of Securitisation Act, has a right to approach the Debt Recovery Tribunal under Section 34 of Securitisation Act but has no right to approach the Civil Suit for setting aside the action of the secured creditor i.e. Bank. The party can approach the Civil Court when there are allegation of fraud in the action of the secured creditor i.e. Bank in acquiring the mortgaged properties. Bank of Baroda Vs. Vinod Kukmar MANU/PH/1045/2015.
- The Division Bench of Bombay High Court in the case of Hari Trading Corpn Vs. Bank of Baroda MANU/MH/0863/2015 has held that at the time of taking possession of immovable property in exercise of powers under Section 13(4)

of Securitisation Act, the borrower has no right to be heard as since he has a remedy of filing an Appeal under section [17](#) and the DRT has a right to restore the possession in the event it is found that the measures which are taken by the Bank are not proper and are not in accordance with law.

CENTRAL EXCISE –BY SHRI PRADEEP K. MITTAL-9811044365

- The AP High Court has held that at the time of hearing of stay petition, without hearing the Counsel for the Appellant, if the Tribunal/Authority direct the Appellant to pre-deposit heavy amount, such order is in violation of principle of natural justice and is, therefore, liable to be set-aside and the Tribunal/authority directed to pass fresh order after giving opportunity. Pearl Beverages Ltd. Vs. CCE 2015 (319) ELT 41 A.P.
- The Supreme Court has upheld the retrospective withdrawal of exemption from payment of excise duty granted to the industries located in North Eastern Region. The High Court has previously, while upholding the principle of promissory estoppels has held that Govt. has no right to order for withdrawal of exemption from payment of Excise Duty to the Industries located in North Eastern Region with retrospective effect. Union of India Vs. Dharampal Satyapal Ltd. 2015 (319) ELT 6 SC.
- The Supreme Court has permitted the presence of Counsel for the person who is sought to be interrogated U/s 108 of the Customs Act, 1962 but, however, the presence of the Counsel should at such distance, which is beyond the hearing distance but within the visible distance - general law is that Advocate cannot accompany the person who is interrogated. M.K. Kundia Vs. Union of India 2015 (319) ELT 9 (SC).
- The Division Bench of the Andhra Pradesh High Court has held that modification application for seeking variation of terms of the stay order is not maintainable as it amount to review, which is not permissible. The modification application can be made only if there is a mistake apparent on the face of the record or error in calculation. KAS Prasad Vs. CESTAT 2015 (319) ELT 24 AP.
- The Appellant has filed an application for rectification/modification of the terms of the stay order but however the said application has not been placed by the Registry before the Bench when the Bench was considering the fact about the compliance of the Stay Order, the appeal itself has been dismissed due to non-compliance of stay order – since the application for modification of stay order was not placed before the Bench. Due to mistake of the Registry of the Tribunal, the Appellant cannot be punished and the appeal is liable to be

restored with a direction to decide the rectification/modification application first. 2015 (319) ELT 47 Chhatisgarh.

- The contractor has filed an appeal before the Commissioner (Appeal) challenging the demand confirmed by the adjudicating authority. The Commissioner (Appeal) has heard the stay application but neither grant any stay nor rejected the application for grant of stay . In the meantime, the Department has issued recovery notice. The Division Bench of the High Court has stayed the recovery till the time the Commissioner (Appeal) passes orders on Stay Petition. B.K.Gogoi Vs. Union of India 2015 (319) ELT 60 (Guwahati).
- The question whether the goods are of prime quality or rejects is a question of fact and does not raise any substantial question of law specially when both the adjudicating authority as well as the Tribunal has concurrently come to the conclusion and hence the appeal on the issue of substantial question of law shall not lie. Commissioner of Customs Vs. R.R. Enterprises 2015 (319) ELT 70 A.P.
- Additional carrying cost of raw material, which is required for the manufacture of finished goods, has been claimed from the customer on the premise that the manufacturer has to keep buffer stock of raw material for two years to cover uninterrupted production of finished goods to be supplied to the customer. The Tribunal has held such additional cost claimed by way of interest is liable to be included in the assessable value for the purpose of Section 4 of Central Excise Act and duty paid thereon. Dewas Metal Sections Ltd. Vs. CCE 2015 (319) ELT 104 Tri.
- The Cenvat Credit Rules 2004 does not provide any time limit for taking credit of the duty paid on inputs so purchased. The cenvat credit can be taken at any time after the purchase of goods. CCE Vs. Borrosil Glass Works Ltd. 2015 (319) ELT 119 Tribunal.
- When the assessee is working on area based exemption Notification No.56/2002-CE, the Appellant is entitled to the refund of only the excise duty so paid but not refund of education cess and higher education cess though the assessee is located in J&K as the education cess and higher education cess are outside the perview of exemption Notification No.56/2002-CE. Narbada Industries Vs. CCE 2015 (319) ELT 136 Tribunal. **Note: It appears to be strange that the such industry is entitled to benefit of refund of Excise Duty but not Cess**
- The amount of Sales Tax paid immediately or payable in future on a deferred payment basis, such Sales Tax is liable to be deducted from the assessable value

while calculating the assessable value U/s 4 of the Central Excise Act. In other words, Excise Duty is not payable on such amount of Sales Tax. Grindwell Norton Vs. Commissioner of Central Excise 2015 (319) ELT 138 Tribunal.

- The Appellant is entitled to take suo-moto credit of cenvat, which has been reversed earlier - since the entire process is merely an account entry reversal, no outflow of funds from the assessee's account and hence the assessee is not liable to file refund application U/s 11B of Central Excise Act. Commissioner of Central Excise Bangalore Vs. STUMP Secheule and Sonappa Pvt. Ltd. 2015(319) ELT 146 Tri.
- When various components of Chandeliers, Lamp Shades and packing are kept in the Card-board boxes and also logo thereon, it does not amount to manufacture within the meaning of Section 2(f) of Central Excise Act, 1944 and, therefore, demand of duty is not sustainable. Kapoor Lamp Shades Company Vs. Commissioner of Central Excise 2015 (319) ELT 170 (Tribunal) Delhi.

SERVICE TAX –BY SHRI PRADEEP K. MITTAL-9811044365

- The Tribunal has held that the definition of input service is inclusive definition and is, therefore, very broad in nature and hence narrow interpretation cannot be placed to say that the services which are used only in the manufacture of final product will qualify for “input service”. In the definition of input service, the word “business” is of a very wide and very expansive and, therefore, has to be considered in a wide and broader manner rather than restricted one. Mangalore Refinery & Petrochemicals Ltd. Vs. CCE 2015 (315) ELT 121 Tribunal.
- The charges for preventive maintenance service for the vehicle, though optional in nature, are includible in the assessable value of vehicle and excise duty would be paid thereon but, however, no service tax shall be payable on the amount claimed for providing such optional services by the dealer. CCE Vs. Volvo India Ltd. 2015 (38) STR 692 Tribunal.
- When the Appellant has availed the advertising and marketing services for the purpose of advertisement for promotion of aerated water manufactured by it and hence the advertisement and marketing services fall within the definition of input services and the assessee is entitled to Cenvat Credit of Service Tax paid on availing advertisement and other sales promotion activities. Coca Cola Pvt. Ltd. Vs. CCE 2015 (38) STR 695 Tribunal.

- The Appellant is entitled to receive commission only on rendering full completion of service, which are agreed to be rendered under the agreement, and if the part of the services have not been rendered and, therefore, the amount of commission so paid previously has become refundable due to non-completion of part of services, such refund/adjustment is not in the nature of penalty and the same is to be treated as if no part of service has been availed and hence no service tax shall be payable - following the Judgment of the Punjab & Haryana High Court in the case of Commissioner of Service Tax Vs. Janta Travels (P) Ltd., & Aggrawal Motors Vs. Commissioner of Central Excise 2015 (38) STR 775 Tribunal (Delhi).
- The Calcutta High Court has held that, under the new regime i.e. after 06.08.2014, in case of Composite Order where the demand of duty, interest and penalty has been imposed, only the 7.5% of the amount of duty required to be deposited and not the amount of penalty and interest. However, where the adjudication order relates to confirmation of penalty alone, then the 7.5% of amount of penalty is required to be deposited as a condition precedent for entertaining the appeal on merits. Share Microfin Ltd. Vs. Commissioner of Customs 2015 (38) STR 457 (Cal).
- The Cenvat credit cannot be disallowed on the contention that the invoice contains the old address when there is no dispute about the receipt of input or input service and the same having been utilized for manufacture of dutiable goods or providing dutiable output service. Asianet Satellite Communications Ltd. Vs. CCE 2015 (38) STR 486 (Tribunal).
- When the Appellant is engaged in the business of acquisition of shares, bonds, debentures or security, the Appellant cannot be categorized as financial institution as no evidence is available on record to show that the Appellant is registered as financial institution under the RBI Act and cannot be taxed for “financial advisory services” simply because the Appellant is registered as NBFC and, therefore, cannot be liable to pay service tax under financial institution for the aforesaid services.
- The Service Tax registration number of the Service Provider was not indicated in the invoice and, therefore, cenvat credit cannot be denied on a highly technical ground, which is wholly untenable specially when during the adjudication proceedings, the Service Provider has provided the Service Tax Registration number along with necessary documentary evidence. Castrol India Ltd. Vs. Commissioner of Central Excise 2015 (38) STR 495 Tribunal.
- The input services of housekeeping, cleanliness for ensuring clean surroundings and working condition for employees, maintenance of gardens and plantation for the purpose of controlling industrial pollution and, therefore, rightly

considered as input service used in relation to the manufacturing activity. CCE Vs. Maruti Zuzuki India Ltd. 2015 (38) STR 503 Tribunal.

- The input service i.e. 'banking and financial services' utilized for sale of shares to raise the finances for carrying out the manufacturing operations, such services shall be covered within the definition of input service as provided under Rule 2(1) of Cenvat Credit Rules 2004. CCE Vs. GMR Industries Ltd. 2015 (38) STR 509 Tribunal
- The provision of security and maintenance services at the residence of Managing Director has no nexus with the output services provided by the appellant company and, therefore, the service tax paid on security and maintenance services at the residence of managing director cannot be allowed the benefit of cenvat credit. Globe Ground India Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (38) STR 510 Tribunal, Delhi.
- When the principal is located abroad outside India and the service of business promotion have been rendered to him and the consideration has been received in convertible foreign exchange, it will be treated as export of services since the service recipient is situated abroad and delivery of services have taken place outside India, therefore, twin condition of export of services stood satisfied and, therefore, no service tax is payable. Ind Energy Ltd. Vs. Commissioner of Customs 2015 STR 878 Tribunal.
- Prior to 01.04.2011, the service tax paid on commercial and industrial construction service availed for setting up of factory were eligible and, therefore, service tax paid on commercial and industrial construction are allowable. The rental service availed for taking warehouse on rent outside the factory for the purpose of storing raw material as well as finished goods temporarily due to space shortage, the cenvat credit of service tax paid on rental service is allowable since the input service are used for storage of finished goods up to the place of removal. Barmalt India Pvt. Ltd. Vs. CCE 2015 (38) STR 882 Tribunal Delhi.

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- Neither the registered office nor the corporate office of the defendant is situated in Delhi. Address of the Defendant was shown in the memo of parties as that of a person described as the Director of the defendant company. Residential address of the Director of the Defendant company in Delhi would not be relevant consideration for vesting territorial jurisdiction on Delhi High Court. Even the averments do not demonstrate as to how would this court be vested with the territorial jurisdiction. Directions are issued to return the plaint to the

Plaintiff for it to be presented before the competent court vested with the territorial jurisdiction. Goodluck Capital (P) Ltd. Vs. Jharkhand Ispat Pvt. Ltd. 2015 (148) DRJ 686.

- If the machinery is defective, it has to be rejected within a reasonable time. If the machinery is rejected after more than one year from installation, then it is not within a reasonable time as per the mandate of Section 41 and 42 of Sale of Goods Act. Chemical Systems Technologies (India) Ltd. Vs. Simbhaoli Sugar Mills Ltd. 2015 (148) DRJ 650.
- Coercive process for arrest and detention of a Judgment Debtor ought not to be resorted to by the Executing Court in the very first instance even before ascertaining whether the decree can be satisfied by the Judgment Debtor. Mere fact that the Judgment Debtors are likely to appear before the court of MM in New Delhi at a future date, although none of them is ordinary resident within its jurisdiction would not confer jurisdiction on this court to straightway order their arrest and detention in the proceedings. State Trading Corporation of India Ltd. Vs. Global Steels Holdings Ltd. & Ors. 2015 (149) DRJ 289.
- Magistrate committed serious error in not considering application under Section 142(6) of the Negotiable Instruments Act for condonation of delay in filing complaint at initial stage and took cognizance. Though it is an irregularity but not the curable defect and if Magistrate for any simple reason does not consider delay in filing complaint, it results in dismissal of complaint. G Ravi Vs. Shivanand Revappa Rebbanavar 11(2015) Banking Cases 26 (Kerala).
- Decree or order which is akin to a decree and is executable, needs to be executed as per law relating to execution and cannot be enforced under contempt petition before the court. Nizamuddin Vs. Ramzani 219(2015) DLT 235.

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- The Delhi High Court in the case of Rameshwar Lal Vs. Escorts Finance Limited MANU/DE/1570/2015 has held that if the Award is contrary to provisions of Limitation Act 1963 and hence it is opposed to the public policy of Indian law and is liable to be set aside.
- Application under Section 9 is filed before commencement of arbitral proceedings and there has to be manifest intention on part of Petitioner to take recourse to arbitral proceedings. Absence of invocation does not reveal manifest intention on part of Petitioner to take recourse to arbitral proceedings.

Reliance Broadcast Network Limited Vs. Broadcast Engineering and Consultants India Ltd. & Anr. 219 (2015) DLT 155.

- Merely because detailed reasoning not given by Arbitral Tribunal, award not liable to be set aside on ground of non-application of mind to contractual terms. Rakesh Kumar and Company Vs. Union of India through the Dy. Chief Engineer 219 (2015) DLT 404 (DB).
- Scope of interference under Section 34 of Arbitration and Conciliation Act is very narrow and Arbitral Tribunal is the master of the factual arena and has the right to even go wrong while deciding the factual issues. Arbitral Tribunal is not expected to deliver an award like a judgment of court. Rakesh Kumar and Company Vs. Union of India through the Dy. Chief Engineer 219 (2015) DLT 404 (DB).

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