

PKMG LAW CHAMBERS

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MONTHLY REPORT FOR AUGUST,2015
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CIRCULARS AND NOTIFICATIONS ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS (MCA) IN THE MONTH OF JULY, 2015

- MCA Circular No.10/2015 : The Ministry has come with a Circular No.10/2015 dated 13/07/2014 informing that the electronic versions of Forms AOC-4, AOC-4 XBRL and MGT-7 will be available for electronic filing latest by 30th September,2015. A separate form for filing of Consolidated Financial Statement (CFS) will be available latest by October 2015. And in view of this,the MCA has decided to relax the additional fee payable on Forms AOC-4, AOC-4 XBRL and Form MGT-7 upto 31/10/2015. Further, a company which is not required to file its financial Statement in XBRL but is required to file its CFS would be able to do so in the separate form for CFS, without any additional fees upto 30/11/2015.
- MCA Circular no. 11/2015 :- MCA has come with a clarification circular no. 11/2015 dated 21/07/2015. Following Clarifications u/s 136 and 137 of Companies Act, 2013 has been provided:
 - If General Meeting is being conducted at Shorter Notice u/s 101(1) then the Company may also circulate the Financial Statement u/s 136 at shorter period along with Notice.
 - In case of foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian company may place/file such unaudited accounts on its website. However, original account need to be translated in English language, if they are not so.
 - The A/c of subsidiaries referred above need to be as far as possible in compliance with CA, 2013 and statement of deviation may be placed on website/ filed along with accounts.

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

- The Writ Petition challenging the Order of Adjudicating Authority under PMLA whereby he confirmed the provisional attachment of banks accounts and assets of the Accused persons who had prima-facie committed the offences of SEBI Act under "Collective Investment Scheme" is not maintainable – though the order of Adjudicating Authority is a non-speaking order. The Delhi High Court declined to entertain Writ Petition by observing that the alternative remedy of Appeal under PMLA is the proper remedy before the Appellate Tribunal and hence Writ Petition is liable to be dismissed. Rose Valley Hotel & Entertainment Ltd Vs. Secretary MANU/DE/1302/2015.

- Any observation by the Adjudicating Authority will not and cannot impact the criminal cases pending against the appellant nor will impact any complaint filed against the said appellant under Sections 3 & 4 of Prevention of Money Laundering Act, 2002 in any manner. Likewise if criminal cases are pending or which may be filed against the appellant, the Courts will have to come to an independent finding on the basis of documents and evidence produced before them, whether the offenses alleged against the appellant have been made out or not. The appellant cannot be convicted and sentenced in any criminal case on the basis of observations of adjudicating authority under Prevention of Money Laundering Act, 2002. Lalit Kumar Agrawal Vs. Dy. Dir. Directorate of Enforcement. MANU/ML/0001/2015

COMPETITION ACT- BY SHRI PRADEEP K MITTAL-9811044365

- When in a particular area, there are number of real estate players and the consumer has option to approach any one of them for his need, it cannot be said that the builder to whom the consumer has approached is a dominant player and, therefore, there is no question of pass of dominant position and the complaint would not be maintainable before Competition Commission. Avtar Singh Vs. Ansal Township and Land Development Ltd. 2015 (127) CLA (SNR) 3 Competition Commission.
- It is the duty of the Director General to assist the Competition Commission in investigating into any contravention of any Competition Act only when directed by the Commission. The DG has a power to summon and enforce the attendance of any person for the purpose of recording of statement or production of documents. Hyundai Motors India Ltd. Vs. Competition Commission of India 2015 (127) CLA 46 Madras.
- The Supreme Court has held that if the Builder/Developer has agreed to pay interest at the rate of 7% on the Deposit Amount, the MRTP/nw Competition Commission cannot grant higher rate of interest i.e. 14% unless in exceptional circumstances to be alleged and proved. Hence order set aside and the DDA has been directed to pay interest only at the rate of 7% pa. DDA Vs. P R Samanta MANU/SC/0771/2015.

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

- HC allows appeal u/s 10F of Companies Act, 1956, sets aside CLB order passed u/s 111 that directed the company to rectify the register of members as CLB did not follow natural justice principles; The CLB could not have ordered for rectification of register of members without serving notice on the effected parties. The High Court further observed that the

service of notice cannot be presumed and there has to be evidence of service of notice on the affected parties and accordingly, the case has been remanded back to CLB for fresh consideration once again. Karnataka HC. [LSI-596-HC-2015-(KAR)]

- The Bombay High Court has held that the CLB in exercise of powers conferred under Section 402 of the Companies Act, 1956 can make all or any of the orders to subserve the ends of justice including the order for payment of Gratuity under the Payment of Gratuity Act and it cannot be said that the authorities under the Payment of Gratuity Act has only powers to grant such relief.

- In a Company, where there is complete dead-lock and irretrievable breakdown between the major shareholders of the Company and the scheme for its revival is neither realistic nor workable, the Company is liable to be wound up U/s 433(f) of the Companies Act, 1956. Etisalat Mauritius Ltd. Vs. Etisalat D.B. Telecom Pvt.Ltd. 2015 (189) Company Cases 304 Bombay High Court.

- Where the Respondent Company had made substantial payment under the Company Petition, the Division Bench of the High Court, being extension of Single Judge Company Court, in exercise of discretion, can grant further time to the Respondent to make balance payment to the Respondent. Maheshwary Ispat Ltd. Vs. Tata Capital Financial Services Ltd. 2015 (127) CLA (SNR) 2 Kolkata.

- The dispute referred in the Company Petition filed U/s 397 and 398 read with Section 402 Companies Act, 1956, cannot be referred to Arbitral Tribunal unless such Company Petition is a dressed-up Company Petition in order to seek ouster of arbitration clause or otherwise Company Petition is vexatious and is not maintainable. Rakesh Malhotra Vs. Rajinder Kumar Malhotra 2015 (127) CLA 140 Mumbai.

- When the Company is managed as a closely held Company, the principle of quasi-partnership can be applied. The appointment of a person as Additional Director without proper and legal board meeting is illegal and null and void. Further, the appointment of a Director without the consent and approval of the Opposite Group (in a closely held Company), in order to gain control over the affairs of the Company, is an act of oppression and is liable to be set-aside. Further, forced retirement of a Director, in violation of the Articles of Association is illegal. The Extra Ordinary General Meeting held in violation of provisions of Articles of Association is also null and void. Sheela Brijkishore Sharma Vs. Shri Bhawani Builders Ltd. 2015 (127) CLA 113 CLB.

- The CLB has no power to decide the validity of AGM held within the time prescribed under the law and it is only Civil Court who can decide the validity of the result of AGM. The CLB has only power to direct holding of AGM and has no power to declare the result as invalid or illegal. This is possible on a petition under Section 397 and 399 read with Section 402 of Companies Act, 1956. *K.Travel Consultants Pvt. Ltd. Vs. Travel Agent Association of India* 2015 (127) CLA 102 CLB.\
- On a Company Petition U/s 391 and 394 of the Companies Act, 1956, the Company Court has to ensure that the scheme is not contrary to Public Interest but does not have the power to direct SEBI/Stock Exchanges to exercise their discretion in a particular way and they can act at their sole and absolute discretion. These authorities are competent to approach the Civil Court to initiate suitable action for redressal of their grievances. *Jindal Securities Pvt. Ltd. Vs. Sistema Shyam Teleservices Ltd.* 2015 (127) CLA 65 (Rajasthan).
- The Company and its Directors cannot be prosecuted for alleged violation of Section 77A(11) of the Companies Act, 1956 merely due to the fact that the Company has passed a Board Resolution but there was no actual buy-back of shares and, therefore, the ingredient of offence U/s 77A(11) of the Companies Act, 1956 is complete. In other words, no violation at all has taken place and, therefore, the prosecution launched by the Registrar of Companies is wholly premature and is wholly an abuse of the process of the Court. The prosecution so launched by the Company and its Director is liable to be quashed. *Smart Link Networks Systems Ltd. Vs. State of Maharashtra* 2015 (127) CLA 34 Mumbai.
- The dispute involving serious and hotly contested questions of fact in relation to transfer of shares cannot be adjudicated by the Company Law Board on a petition U/s 111A of the Companies Act, 1956/Section 58 and 59 of the Companies Act, 2013 but only the Civil Court will have the jurisdiction to try and decide the seriously disputed question of law and facts. The CLB has a summary jurisdiction and hence serious disputed issues cannot be tried *T. Rajendra Vs. Aryabhat Solutions Ltd.* 2015 (127) CLA 18 Andhra Pradesh High Court.
- There is no absolute bar to refer a dispute to an arbitrator raised in a petition filed u/s 397, 398, 402 and 403 of the Companies Act, 1956 provided the dispute is arbitrable. **Re. M/s A & C BRAID AND ROPE CO. PVT.LTD.** C.P NO. 109(ND)/2014 ORDER DATE: 2/07/2015 [CLB DELHI BENCH]
- When a case is filed under Section 397 & 398 of the Companies Act,1956, the points to be seen for invocation of these provisions are, it has to be seen whether the aggrieved is qualified to file a petition as envisaged under Section 399, next, it has to be seen whether the acts

complained of are in relation to the affairs of the company, and then, to see whether the acts complained of revealing the conduct of the persons in relation to the affairs of the company is oppressive against and prejudicial to the interest of the petitioner. If the petitioner is able to prove that the above issues are in favour of him, then CLB has every right u/s 402 to pass any order that can bring an end to the matters complained of. **SH. EESHWER SINGH Vs. M/s. MILESTONE EARTHCON PRIVATE LIMITED & OTHERS.** C.P NO. 12(ND)/2013, ORDER DATE: 09/07/2015

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

- The CBDT vide letter numbered LETTER D.O. No.279/M-88/2014-ITJ, DATED 3-7-2015 has cautioned the department against frivolous appeal on account of all round criticism by court.
- The Central Government by notification NO. 51/2015 dated 24.06.2015 has provided for non deduction of tax in respect of income received by investment fund u/s 10(23FBA) of the Income Tax Act. Investment fund is defined under clause (a) of explanation 1 under section 115UB of the Income Tax Act.
- CBDT notifies 1081 as cost inflation index for F.Y.2015-16. Notification no. 60/2015 dt 24.07.2015.
- The Indian Government entered into an agreement with US called Foreign Account Tax Compliance Act (FATCA) in order to prevent tax evasion.
- The CBDT vide notification no. 1/2015 dated 10.07.2015 has extended the date of submitting the V form for electronically filed return without digital signature up to 31.10.2015.
- The CBDT vide notification no. 2/2015 dated 13.07.2015 notified the concept of Electronic Verification Code in case of electronically filling of Income Tax Return.

- CBDT vide order 119(1) dated 20.07.2015 has allowed the benefit of return filed for A.Y.2013-14 and A.Y.2014-15 electronically filed without digital signature but not sent to cpc Bangalore to submit through EVC upto 31.10.2015 as dated extended through notification dated 10.07.2015.
- The CBDT has issued Circular No. 13 of 2015 dated 6th July 2015 in which it has noted that a number of queries have been received from the public about the scope of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015. The Board has considered the said queries and clarified the points raised by issue of the circular in the form of questions and answers.
- The CBDT has issued Circular No. 12 of 2015 dated 02.07.2015 setting out the Explanatory Notes on Provisions Relating to Tax Compliance For Undisclosed Foreign Income and Assets as Provided In Chapter VI of The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- The Ministry of Finance has vide Notification No. 58/2015 dated 2nd July 2015 notified the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015
- The CBDT has issued an Order dated 01.07.2015 stating that a difficulty has arisen in interpreting the expression 'date of commencement of the Act' in the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The CBDT has stated that the said 'date of commencement of the Act' shall be 1st July 2015.
- The Ministry of Finance has issued a Press Release dated 01.07.2015 stating that 30th September, 2015 is the date on or before which a Person may make a Declaration in respect of an Undisclosed Asset Located Outside India Under the Compliance Provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; It is also stated that the last date by which a person must pay the tax and penalty in respect of the undisclosed foreign assets so declared shall be the 31st day of December, 2015.

- The CBDT vide notification dated 29.07.2015 has notified ITR form 3,4,5,6,7 for A.Y.2015-16.

**DOMESTIC TAXATION CASE LAWS - BY SHRI MANOJ KUMAR
MITTAL CA - 9810764620**

- Where during search and seizure, investments were found in name of assessee, presumption could only be that they formed part of unaccounted income of assessee and mere fact of producing affidavit of close relatives would not be sufficient explanation. **[2015] 375 ITR 79 (Patna)**
- Section 206C does not draw any distinction between 'timber grown in india' and 'timber imported', from abroad. **[2015] 275 CTR 429 (Kerala)(MAG.)**
- Discount allowed by assessee to its distributors in respect of starter packs and recharge coupons for its prepaid mobile service amounted to payment of commission or brokerage requiring deduction of tax at source under section 194H. **[2015] 59 taxmann.com 176 (Calcutta)**

**TRANSFER PRICING CASE LAWS - BY SHRI MANOJ KUMAR
MITTAL CA - 9810764620**

- TP study should be undertaken by Resale Price Method where AE was only undertaking distribution of assessee's products in local market. **[2015] 40 ITR(T) 737 (Hyderabad - Trib.)**
- IT/ILT : Following Order passed by jurisdictional High Court, it was to be held that TPO could not make addition to assessee's ALP in respect of AMP expenses incurred on behalf of AE by working out non-routine AMP expenses on basis of bright line test. **[2015] 59 taxmann.com 148 (Delhi - Trib.)**
- Where TPO while computing ALP did not consider sum representing variation in closing stock which is essential in determining correct total cost and operating cost, TP addition was to be deleted. **[2015] 59 taxmann.com 185 (Lucknow - Trib.)**

INTERNATIONAL TAXATION CASE LAWS - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- Since international shipping profits earned by assessee did not fall or was not dealt with any other articles of Indo-Swiss Treaty, it was governed by residuary article 22 of DTAA and, therefore, applying article 22 of DTAA, income from shipping was not taxable in India. **[2015] 38 ITR(T) 758 (Mumbai - Trib.)**
- In view of decision of Asstt. CIT v. Clough Engineering Ltd. [2011] 130 ITD 137/11 taxmann.com 70, (Delhi), interest income received from Income-tax Department on refund could not be said to be connected with assessee's permanent establishment in India, thus, interest would be assessed as per article 11 and not article 7 of DTAA between Indian and Switzerland. **[2015] 38 ITR(T) 758 (Mumbai - Trib.)**

CORPORATE LAWS - BY SHRI PRADEEP K MITTAL ADVOCATE - 9811044365

- In a Complaint U/s 138 of NI Act, the power of attorney holder, who has signed the cheques, which has been subsequently dishonoured, such power of attorney holder shall alone be liable and not the person i.e. principal who has given the power of attorney to that power of attorney holder. *J.Thampi Vs. Donbosco. 2015 (127) CLA (SNR) 6 Kerala.*
- If the company for whose behalf cheque has been issued by a person by signing the same, the person signing the cheque shall be personally liable and the complaint can proceed further against him even if the company (for whose behalf cheque has been issued) has not been made a party in the complaint filed under Section 138 of NI Act – since the person signing the cheque is liable on his own right. *MAS Saikh Vs. Vijay D Salvi MANU/SC/0720/2015.*
- If the cheque has been given as an advance payment for execution of a contract and before execution could commence, the contract has been cancelled and yet the cheque has been presented for encashment and the cheque has been dis-honoured, Section 138 of NI Act is not applicable – same is applicable only if the enforceable debt is payable on the date of presentation of cheque. *Sangeeta Batra Vs. VND Food MANU/DEL/1894/2015.*
- The Division Bench of the High Court, being an extension of the Company Court under Section 483, is competent to reschedule the payment of dues in a petition for winding up. Thus, where the Respondent Company paid installments to a substantial extent and prayed for some respite, the Division Bench would be within its right to

consider such prayer and examine as to whether the Company would deserve such treatment and the court would not be so powerless to entertain such application. Maheshwaray Ispat Ltd. Vs. Tata Capital Financial Services Ltd. (2015) 127 CLA (Snr) 2 (Cal.)

- Where the Company has lost its substratum and there is complete lack of faith and probity resulting in a deadlock and irretrievable break-down between the major shareholders of the company and the scheme for its revival is unrealistic, speculative and unworkable, it has to be held that a case is made out by the Petitioner to wind up the company under clause (f) of Section 433. Etisalat Mauritius Ltd. Vs. Etisalat DB Telecom (P) Ltd. And Others. (2015)127 CLA (Snr.) 2 Bombay.

CENTRAL EXCISE –BY SHRI PRADEEP K. MITTAL-9811044365

- The condition of mandatory deposit of 7.5% of the amount of duty confirmed by an order of the adjudicating authority is not restricted to appeals filed on or after 2014 – it will also apply to cause of action arising prior to 06.08.2014. Arjun Industries Vs. Commissioner of Customs, Jaipur 2015 (39) STR 3 Rajasthan DB.
- When brand name/trade name has been used on packing material by all units of manufacturer and when such monogram is only house mark merely for the purpose of identification of Group and not the brand name for identification of product, the benefit of SSI exemption cannot be denied. CCE Vs. Sanghi Threads 2015 (321) ELT 180 SC.
- When on a particular issue, there have been conflicting judgments of different courts from time to time, the assessee cannot be held liable and extended period of limitation of five year shall not be invocable against such assessee. Kiran Ispat Udyog Vs. Commissioner of Central Excise 2015 (321) ELT 182 SC.
- When the exemption notification is on the premise that there has been captive consumption, captive consumption shall not mean that the goods have been sent to another unit of the same assessee and not consumed within the same factory itself, therefore, the benefit of captive exemption notification shall not be available. Bata India Ltd. Vs. CCE 2015 (321) ELT 194 SC.
- In case of allegation that the assessee has not actually received the input but has received only the invoice, the Department cannot base its case merely on the basis of statement of registered dealer who has given the invoice and no investigation done at the buyer's end and at the same time, cross-examination of dealer not allowed, the demand cannot be confirmed. B.P.Alloys Ltd. Vs. CCE 2015 (321) ELT 261 Tribunal.

- Cenvat Credit on the photocopy of bill of entry – photocopy has been certified by the Dy. Commissioner (Customs) for due payment, Cenvat Credit cannot be denied specially when the receipt of input and utilization of input in the manufacture of final product is not in dispute. Chloride Alloys India Ltd. Vs CCE 2015 (321) ELT 265 (Tribunal).
- Air-conditioners installed within the factory premises to keep the temperature under control in the control room of the factory, Cenvat Credit is permissible. Agrawal Foundaries Vs. CCE 2015 (321) 267 Tribunal.
- At the time of visit of excise officials, the statement of Director of the Company has been recorded wherein he confirmed excess stock. There is no weighing of excess stock by the Excise Officials but conclusion of excess stock has been drawn by the excise officials on the basis of eye estimation otherwise in no other records or otherwise there is nothing to prove excess stock, the demand cannot be confirmed. CCE Vs. Devi Iron and Power Pvt. Ltd. 2015 (321) ELT 270 (Delhi).
- When inputs have been sent to the job worker and there is a process loss at the job workers end and the process loss has been due to treatment of materials so sent with chemicals and thereby dust and other particles have been removed, because of which the process loss has arisen. Such process loss cannot be denied unless the Department establishes that the input/goods have been removed clandestinely. Mittal Pigments Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (321) ELT 275 Tribunal.
- The Show Cause Notice sent by the Department should set out the allegation in a very clear, specific and unambiguous manner and at the same time the provisions of law, which is alleged to have been violated, otherwise the Show Cause Notice is bad in law and on the basis of such defective Show Cause Notice, no demand can be confirmed. Cromptons Greaves Ltd. Vs. Commissioner, Central Excise 2015 (321) ELT 278 Tribunal.
- The Cenvat Credit of capital goods is sought to be denied on the contention that Diesel Generator and Air Compressor was not exclusively used for manufacture of dutiable goods but a part of electricity so generated was sold outside. Credit on above capital goods can be denied only when these have been used exclusively for the manufacture of exempted goods and/or for providing exclusively exempted services. Mann and Hummel Filter Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (321) ELT 296.
- Where there is a mismatch in the description of goods as shown in the invoice of the first stage dealer and that of a manufacturer, the Cenvat

Credit cannot be denied. When there is no dispute that input has not been received in the factory and the Department has not carried out any investigation to prove that the inputs were not received. Ram Ganga Cements Pvt. Ltd. Vs. CCE 2015 (321) ELT 299 Tribunal.

- In case, the adjudication authority wishes to rely upon the statement of a person (without providing his cross-examination) the condition of Section 9(d) (2) shall have to be fulfilled as enumerated in the judgment of Delhi High Court in the case of J K Cigarette Ltd. Vs. Union of India. 2015 (321) ELT Delhi High Court.
- In the event of clandestine removal of goods, demand cannot be confirmed simultaneously on two parties saying that it has been confirmed jointly and severally, likewise, penalty cannot be imposed on two parties saying that jointly and severally - for one product, there can only be one manufacturer at a time. Rajesh Kumar Agarwal Vs. Commissioner of Central Excise 2015 (321) ELT 313 Tribunal (Delhi).
- CENVAT credit with respect to lead ingots used for protective coating/lining of the chemical reaction vessels will be eligible for CENVAT credit. Appeal filed by the appellant for the same is allowed. MANU/CS/0137/2015 **Gujarat Plybond Vs. Commissioner of Central Excise, Customs and Service Tax**
- Cenvat credit cannot be denied on the ground of non-receipt of inputs when the Tribunal found that department is not able to prove that any alternative raw material was received and used in the final products. If the appellant had produced several evidence in respect of receipt of inputs and the same were not disputed and the officers proceeded merely on the basis of statements of an employee of an appellant, denial of cenvat credit cannot be sustained. CENVAT credit availed on the basis of invoices cannot be denied. **STI Industries Vs. Commissioner of Central Excise & S.T.** MANU/CS /0129 /2015
- Service charge is not a trade discount and credit for the same is not available unless documentary evidence are available. It is necessary that customer should know from the invoice that discount is clearly shown on the invoice and the same is passed on to the customer then only deduction on account of discount is permissible under the excise law. MANU/CM/0111/2015 **Mahindra Ugine Steel Co. Ltd. and Ors. Vs. Commissioner of Central Excise**

(a) The writ petition cannot be held maintainable if a tribunal or authority that is required to defend the impugned order has not been arrayed as a party, as it is a necessary party.

(b) Tribunal being or not being party in a writ petition is not determinative of the maintainability of a letters patent appeal.

SERVICE TAX –BY SHRI PRADEEP K. MITTAL-9811044365

- Car Parking Service provided at the Head Office for parking of Cars of Managers and the Company, the activity directly related to business of manufacture and hence Cenvat Credit is permissible relying upon the judgment in the case of Ultratech Cement Ltd. Vs. CCE and Goodyear India Ltd. Vs. Commissioner of Central Excise 2015 (321)ELT 320 Tribunal.
- House-keeping and land-scaping services to maintain lawns in the vicinity of factory premises, the service tax paid on such service is allowable as a Cenvat Credit. CCE Vs. Ranetrw Stearing Systems Ltd. 2015 (39) STR 13 Madras DB.
- The service rendered for installation and commissioning of captive power plant shall not fall within the “consulting engineering service” – for the period prior to 01.07.2003 and hence no service tax is leviable. It is however clarified that the installation and commissioning services have fallen in net of Service Tax w.e.f. 01.07.2003 and, therefore, service tax shall be payable only if the installation and commissioning services have been rendered subsequent to 01.07.2003. Larsen & Toubro Ltd. Vs. CCE 2015 (39) STR 168 Tribunal.
- During festival, stalls have been allotted to various parties for selling toys, garlands and other articles within the premises owned by the Appellant, it shall not amount to providing Mandap Keeper Service and no service tax is leviable. Shri Chatush Ringy Seva Sansthan Vs. Commissioner of Service Tax 2015 (39) STR 169 Tribunal.
- The activity of laying cable below the ground level shall not fall under “commercial or industrial construction” and, therefore, no service tax shall be payable. Lakshmi Construction Vs. CCE 2015 (39) STR 175 Tri DB.
- The taxable service of clearing and forwarding, transportation covers clearing of goods and its subsequent transportation to a place of destination on the directions of principal and such taxable service shall not cover activities where the party has to merely follow up and coordination only with the Coal producing Companies for dispatch of racks. Coal Handlers Pvt. Ltd. Vs. CCE 2015 (38) STR 897 SC.
- Where the payment is made to a party on the basis of number of cases/crates handed by them and not on the basis of number of persons supplied by them for rendering services such as up-loading, clearing of washing area, polishing area, building area, godown and surrounding as

per the fixed schedule, such service shall not fall under "Man Power Supply Services. Rama Enterprises Vs. CCE 2015 (STR) 963 Tribunal.

- When the adjudication order has been passed without issuance of Show Cause Notice, the said is unsustainable and non-est. The Commissioner (Appeal) has rightly set-aside the adjudication order, which was straightaway passed without issuance of Show Cause Notice and without receiving reply to the Show Cause Notice from the party and obviously also without giving any personal hearing. The Commissioner of Central Excise Vs. L.R.Chandra 2015 (38) STR 969 Tribunal.
- The activity of rental of godown, insurance charges of godown and commission paid for sale of sugar after clearance from the factory are integral part of business and, therefore, the assessee is entitled to Cenvat Credit. Dhampur Sugar Mills Ltd. Vs. CCE 2015 (38) STR 1004 Tribunal Delhi.
- The Show Cause Notice contains allegation that the service provided by the party falls under "Support Service of Business or Commerce" as the party was providing the services of cleaning of coaches, toilets and supply of bed-rolls in the A/C coaches of Indian Railways, this does not fall under the "Support Service of business or Commerce" but actually falls in "Business Auxillary Service", but, however, there was no such allegation when the aforesaid service fall under "Business Auxillary Service" and, therefore, the Order of Commissioner (Appeal) travels beyond the allegations contained in the Show Cause Notice and hence bad in law. Deepak & Co Vs. CCE 2015(38) str 1010 (Tri-Delhi).
- The activity of repair, alterations, renovation, restoration and finishing service even if carried out in a particular flow of the multistoreyed building, this activity fall within the perview of "Commercial or Industrial Construction Services" and the Service tax is liable to be paid accordingly. Kalasagar Vs. Commissioner of Service Tax 2015 (38) STR 1017 Tribunal, Mumbai.
- The services such as conceptualizing design development, modification, rectification or up-gradation of working system of Companies, other services such as consultancy and commercial aspect, current business scenario, import and export trend in India, marketing strategies, economic and political scenario clearly falls under the ambit of "management consultancy services" and does not fall under "support service of business/commerce or "business consultancy services". Enpro Oil Pvt. Ltd. Vs. CCE 2015 (38) STR 1038 Tribunal.
- The Appellant engaged in the activity of assisting in programe of cutting and inspection of sugar cane in the sugar cane field for which they paid service tax under "Business Auxillary Service". The Sugar

Company provided equipment, tractors, trucks, bullock-carts, labourer for cutting of sugar cane in the field, the Appellant cannot be charged under "Manpower Recruitment and Supply Agency Services" Sriram Oos TOD Majoor Sewa Sangh 2015 (38) STR 105 Tribunal.

CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436

- Writ petition under Article 226 of the Constitution of India, 1950 are governed by the principle of limitation and this Court cannot grant monetary emoluments which were due 3 years before filing of writ petition. Kamlesh Gopal Vs. Union of India & Ors. 221 (2015) DLT 89.
- Trial Court not expected to function like post office and mechanically frame notice at the stage of framing of Notice under Section 251, Cr. P.C and bound by law to apply its mind to find out whether prima facie case is made out against the accused or not. P.C. Bandivadekar Vs. State (NCT) of Delhi & Ors. 221 (2015) DLT 53.
- Amicable settlement of dispute between parties vide Memorandum of Understanding and the misunderstanding which led to registration of FIR, now stands cleared between parties. Continuance of proceedings arising out of FIR in question would be an exercise of futility and, accordingly, the FIR and proceedings emanating therefrom quashed. Rinku Kumar Singh Vs. State & Anr. 221 (2015) DLT 68.
- Where sufficient cause is not shown by applicants and applications are vague, evasive and false averments in the application under Order 9 Rule 13 CPC. In such matters ex-parte decree shall not be set aside. Pal News Media (P) Ltd. Lemon Entertainment Ltd. Vs. Super Cassettes Industries Ltd. 220 (2015) DLT 698 (DB).
- Dropping of proceedings at notice stage cannot be equated with recalling summing of order. P.C. Bandivadekar Vs. State (NCT) of Delhi & Ors. 221 (2015) DLT 53.
- Appeal against order dismissing petition under Section 24 CPC i.e transfer of matter is not a judgment and appeal not maintainable. Single Judge has, for administrative convenience refused to transfer proceedings from one court to the other in exercise of discretionary powers under Section 24 CPC and in the impugned judgment, there is no adjudication on merits of the case of either of parties. Paminder Gujral & Ors. Vs. Kirnajt Gujral & Anr. 221 (2015) DLT 330 (DB).
- Till arguments concluded on framing of notice, personal appearance of Petitioner be not insisted upon by Trial Court upon Petitioner filing application under Section 205, Cr.P.C. along with affidavit and undertaking regarding proceedings in case. If Petitioner delays the proceedings before Trial Court, the Petitioner will not have benefit of

exemption from personal appearance extended by this Court. P.C. Bandivadekar Vs. State (NCT) of Delhi & Ors. 221 (2015) DLT 53.

- Liberal pragmatic, justice-oriented and non-pedantic approach has to be adopted while considering reasons offered to explain delay by a litigant in the application under Section 5 of the Limitation Act. That would not mean that in each and every case delay has to be condoned even where no convincing reasons are offered and if such an approach is adopted it will make Section 5 of Limitation Act, 1963, nugatory. If a litigant is grossly negligent and reasons offered are stereotype, vague and lack bona fides delay cannot be condoned. Length of delay is immaterial and it is sufficiency of reasons which matters. Subhash Chand Vs. MCD 221 (2015) Delhi Law Times-298.
- High Court has no power to condone delay in filing leave to defend application under Section 14(1) (e) of Delhi Rent Control Act and ARC committed no illegality in not condoning the delay. High Court acts in supervisory capacity in exercise of jurisdiction under Section 25B(8) of Act to see whether any illegality committed. Bhim Sen Batra Vs. Shreyans Buildwell Pvt. Ltd. 221 (2015) Delhi Law Times 413.
- The principal who has given an authority to operate the account to the power of attorney-holder cannot be held liable for offence of dishonor of cheque drawn by the Power of attorney holder punishable under Section 138 of the Negotiable Instruments Act. It is the power of attorney holder who alone is liable. Jayaprabha Harikumaran Thampi Vs. Don Bosco (2015) 127 CLA (Snr.) 6 (Kar).

ARBITRATION & CONCILIATION ACT, 1996 - BY SHRI PRAVEEN K. MITTAL-9810826436

- Court while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 is not an appellate court before whom proceedings can be treated as in continuation of trial and Section 34 of the Arbitration and Conciliation Act, 1996 offers Court a limited scope to interfere with award of an Arbitrator. TEMA INDIA LTD. VS. ENGINEERS INDIA LTD. 221 (2015) DLT 348.
- Restraint against invocation or en-cashing Performance Guarantee under Section 9 of the Arbitration and Conciliation Act, 1996. Termination of concession agreement by Petitioner pre-suppose concluded contract and no plea of fraud in execution of contract of Bank Guarantee, or irreparable injustice by Petitioner. No averment that bank had knowledge of fraud. Hence Petitioner not able to establish prima facie case in its favour and balance of convenience is also not in favour of Petitioner for this Court to injunct respondent from invoking Bank Guarantee. GMR Kishangarh Udaipur Ahmedabad Expressway Ltd.

Vs. National Highway Authority of India 221 (2015) Delhi Law Times 316.

- Where the Plaintiffs themselves have filed certified copy of the agreement in the trial court along with the application for reference to arbitration and it is already on record, there is no need for the Respondent to file original or certified copy of the agreement along with the interlocutory application for the purpose of deciding the issue under sub-section (1) of Section 8 of the Arbitration and Conciliation Act, 1996. Asian Securities & Estate Ltd. Vs. Ms. Nauseen Riyaz and Ors. (2015) 127 CLA (Snr.) 1 (A.P).

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