

PKMG LAW CHAMBERS

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MONTHLY REPORT FOR MARCH, 2016
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CIRCULARS AND NOTIFICATIONS ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS (MCA).

- MCA has come with a notice on 28.01.2016 inviting suggestions and comments on the draft rules w.r.t procedure to be followed by NCLT/NCLAT. The draft rules are on: 1)Compromises, Arrangements and Amalgamations; 2) Prevention of oppression and mismanagement and 3) Procedure to be followed by NCLT/NCLAT.
- In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act,2013 the Central Government establishes a Central Registration Centre (CRC) who shall function under the administrative control of Registrar of Companies, Delhi for discharging Or carrying out the function of processing and disposal of applications for reservation of names i.e., e-Form No. INC-1 filed along with the prescribed fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014.under the provisions of the said Act.
- Version of Form INC-1 is modified w.e.f.26th Jan,2016 and Version of Form 2LLP is likely to be modified w.e.f. 28th Jan,2016.

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

- In case the notice U/s 560 of the Companies Act, 1956 has not been sent by the ROC to the Company concerned before striking off the name of the company from the register maintained by ROC, the order of the ROC striking of the name of the Company is liable to be quashed and the name of the company, so struck off, ordered to be restored by the Company Judge. PPI Enterprises Pvt. Ltd. Vs. ROC 2016 (226) DLT 7.
- The CLB in the case of Chandrasekhar Gupta Vs. Savitir Textiles (P) Ltd MANU/CL/0137/2015 has observed that allegations of siphoning and not holding meetings and not holding AGM in compliance of the statutory provisions, the same cannot become a ground unless such violations are coupled with oppression and misconduct. When the main cause of action that is raised by the petitioner being in relation to appointment of directors, I do not think it can become a reason to take up this as an issue covering the cause of action u/s. 397 & 398. If at all any violation of the provisions of the settlement are concerned, as long

as it is not coupled with inequity or oppression or mismanagement, the said party has to approach Civil Court, not before Company Law Board, which is solely designed to deal with cases on equity.

- The Supreme Court in *Rajni Sanghi Vs. Western India Motors Ltd* MANU/SC/1376/2015 has observed that "family arrangement was arrived at by signing the Deed of Settlement among the various segments of the family and family settlement have to be given primacy and supremacy over the Award by the Arbitrator made subsequently in relation to certain disputes amongst various segments of family. The SC held that family arrangement deserve to have pre-eminence over the award in question.
- The Scheme of Merger/Amalgamation upon being sanctioned by the High Court shall be binding on both the companies if the transferee undertook to comply with (a) accounting principles and disclose any deviation in its financial statement after the scheme is made effective, (b) amalgamation reserves account is made available for declaring dividend (c) valid contracts entered into by the transferor companies binding on the transferee companies resulting in automatic absorption of contracts of employees (d) scheme not affecting employees of transferor companies (e) companies complying with the requirements of change of name. *Sava Healthcare Ltd 2016 (130) CLA 37 (Guj)*.
- A company which has been incorporated under Section 34 of Companies Act, 1956 would be entitled to exemption under Section 25 of Companies Act, 1956 only when company holds licence under sub-section (1) of Section 25 and also followed by registration granted under Section (2) of Section 25. If the licence has been revoked, then the company would continue to be incorporated under Section 34 but shall cease to enjoy the exemption under Section 25 of Companies Act, 1956. *Financial Planning Supervisory Foundation Vs. SEBI 2016 (130) CLA 70 SAT*.
- The CLB shall be entitled to pass an order of injunction against the third party who is not a party to the proceeding under Section 397 if there is an imminent danger that the third party may alienate the immovable property which had been acquired by the third party at a throw-away from the Respondents. Upon the application of the petition, the third party would be allowed to be impleaded as a necessary party. *Dharamdas Nandlal Vs. Meridian Construction (P) Ltd 2016(130) CLA 90 CLB*.
- When the Articles of Association of the Company mandates that the employees (who are holders of shares of the company) shall have to surrender their shares upon their retirement from the employment of the company, employees cannot avoid their obligation since the provisions of Articles of Association of the company is binding between

the company and its shareholders. The directions issued by the Company to surrender the shares does not amount to acts of oppression and mis-management. Ram Saroop Vs. Hindustan Thompson Associates (P) Ltd.

- The Division Bench of Madras High Court in the case of Rudhra Dev Aviation (P) Ltd Vs. Globe Detective Agency (P) Ltd MANU/T4N/0027/2016 it is clear that inspite of issuance of such notices, the appellant-Companies failed to pay the amounts due to the respondent-Company within the stipulated time as per the provisions of the Companies Act. Thus, it has to be held that the appellant-Companies have been wilfully evading the payments due to the respondent-Company and hence winding up petition would be maintainable.
- The Meghalaya High court in the case of KaishVerma Vs. D Verma MANU/MEGH/0001/2016 has held that the Article of Association of the company i.e. Pegasus Hotels Private Limited is binding not only on the company but also the members i.e. shareholders. The Co. is required to convey AGM of the company in compliance with Sections 165 and 166 of the Companies Act, 1956 and in default, company is subjected to penalty as provided under Section 168 of the Companies Act, 1956.
- The Bombay High Court in the case of Yusuf Kagzi Vs. Avigo Trusette Co (P) Ltd MANU/MH/0009/2016 has observed that allottees of shares whose names were not entered in the register of members can file petition under Sections 397 and 398 Oppression & Mis-management. The Court held that such petition was maintainable at the instance of shareholders to whom share certificates were issued notwithstanding the omission of their membership in respect of those shares in the register. The Court further held that the company cannot take advantage of its failure to enter particulars in the register.
- When the petitioner had transferred his shares long time back and had the knowledge of transfer of shares through Annual Returns so filed by the company and after few years, the petitioner cannot turn around and challenge such transfer or shares by a filing a petition under Section 397 read with Section 111 of the Companies Act, 1956. The petition is totally dishonest and is liable to be dismissed. Sunder Iyer Vs. Twenty First Century Realty Ltd 2016 (130) CLA 107 CLB.
- An application from a shareholder who has just a few shareholder seeking inspection of statutory records of the company can be termed as a dishonest since practically all the statutory records are available on the website of MCA. Such application, being dishonest and frivolous, is liable to be dismissed. Anil Kr Poddar Vs. Bonanza Industries Ltd 2016 (130) CLA 130 CLB.

- The Supreme has observed that general principle that sale of shares by itself is not sale of assets of the company. However, where transfer of shares is to cover up the real transaction which is sale of mining lease for consideration without the previous consent of competent authority, as statutorily required which is sought to be overcome with the plea that it was a transaction merely of transfer of shareholding. The SC held that on the face of it the transaction is clearly that of sale of the mining lease and not merely sale of shareholding simplicitor. State of Rajasthan Vs. Gola lime Stone Khanji Udyog Ltd MANU/SC/0058/2016.
- When the defense of the respondent-company is a substantial one, machinery for winding up will not be allowed to utilize merely as a means for realizing its debts due from a company. Therefore, there is no justification whatsoever for allowing the present winding up petition and is liable to be dismissed. Walchand Industries Ltd Vs. JUD Cement Ltd MANU/MG/0004/2016. Meghalaya HC.

**INCOME TAX CIRCULAR, NOTIFICATION AND PRESS RELEASE -
BY SHRI MANOJ KUMAR MITTAL CA - 9810764620**

- The CBDT has issued Circular No. 25/2015 dated 31.12.2015 pointing out that pursuant to the judgement of the Delhi High Court in [Nalwa Sons Investment Ltd](#) 327 ITR 543 (Delhi) and the substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under 271(1)(c) of the Act is not attracted with reference to additions /disallowances made under normal provisions. The CBDT has clarified that in cases prior to 1.4.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment. The above settled position is to be followed in respect of section 115JC of the Act also. The CBDT has accordingly directed that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon
- The CBDT has issued Circular No. 24/2015 dated 31.12.2015 in which it has explained the law relating to recording of satisfaction note by the AO under sections 158BD/153C of the Income-tax Act. The CBDT has drawn attention to the verdict of the Supreme Court in [CIT vs. Calcutta Knitweaves](#) 362 ITR 673 (SC) in which the stages at which the

satisfaction note has to be prepared have been set out. The CBDT has further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts. The CBDT has also directed that pending litigation with regard to recording of satisfaction note under section 158BD /153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court

- The CBDT has issued a Guidance Note dated 31.12.2015 to explain the manner of ensuring compliance with the reporting requirements provided in Rules 114F to 114H and Form 61B of the Income-tax Rules, 1962 which deal with Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS)
- The CBDT has issued a press release dated 30.12.2015 stating that as part of the endeavour of the Income tax Department to digitise various functions of the Department for providing efficient taxpayer services, electronic filing of appeal before CIT(Appeals) is being made mandatory for persons who are required to file the return of income electronically. It is claimed that by this change "the burden of compliance on the taxpayers in appellate proceedings will be significantly reduced".
- The CBDT has issued Instruction No. 20/2015 dated 29.12.2015 in which it has issued clarifications on several issues in order to facilitate the conduct of scrutiny assessments in cases selected through Computer Aided Scrutiny Selection ('CASS'). The CBDT has also stated that as far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year – one is 'Limited Scrutiny' and other is Complete Scrutiny'. The assessee concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases has been explained in detail by the CBDT.
- The CBDT has issued Instruction No. 19/2015 dated 29.12.2015 stating that instances have come to the notice of the Board that in cases selected under scrutiny, while issuing the first notice, Assessing Officers do not convey the specific compliance requirements like production of accounts, furnishing of documents, information, evidences, submission of other requisite particulars etc. Since the taxpayers or their authorized representatives are required to comply with the statutory notice issued by the Assessing Officer, they remain clueless about the information required to be submitted and their appearance before the Assessing Officer does not serve any fruitful purpose except recording of their presence. This causes undue hardship to the taxpayers and unnecessary wastage of their time. The CBDT has directed that Assessing Officers should first go through the returns of income which have been selected

for scrutiny and identify the issues which require examination. The initial notice issued under section 143(2) of the Income-tax Act, 1961 should itself be accompanied with the questionnaire containing details of specific documents/information/evidences etc. that are required to be furnished by the taxpayer in connection with scrutiny assessment proceeding in their respective case.

- The CBDT has issued Circular No. 23/2015 dated 28.12.2015 stating that in the case of UCO Bank (Writ Petition No. 3563 of 2012), the Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. It is pointed out that in such cases, it is not known who the beneficiary of the fixed deposits will be till the Court passes the appropriate orders in the matter. The amount and year of receipt is also unascertainable. The High Court quashed Circular No. 8 of 2011 and stated that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. The Board has accepted the aforesaid judgment and clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income. The CBDT has also directed that such issues should not be contested in appeal and pending litigation, if any on the issue before various Courts/Tribunals should be withdrawn/not pressed upon.
- The CBDT has issued a press release dated 23.12.2015 stating that the Finance Act, 2015 has amended, with effect from 01.04.2016, the provisions of Income-tax Act relating to determination of residence of a company. In accordance with the amended provisions a company would be said to be resident in India in any previous year, if it is an Indian company or its Place of Effective Management (POEM) in that year is in India. It is further stated that the Explanatory Memorandum to the Finance Bill, 2015 stated that a set of guiding principles for determination of POEM would be issued for the benefit of the taxpayers as well as the tax administration
- The CBDT has issued Instruction No. 18/2015 dated 23.12.2015 clarifying the position with regard to the applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 1.04.2015 in the wake of instruction No.9 dated 02/09/2015, Press Release dated 24.09.2015 and the decision of the Supreme Court in the case of Castleton Investment Ltd
- The CBDT has issued a letter dated 15.12.2015 stating that the Revenue Secretary has directed that henceforth any

notice/letter/communication issued by any officer under Department of Revenue; including CBDT, its directorates and field formations; to the tax payers, members of public should invariably contain mention of email address and office phone numbers, of the officers signing such, communications/notice/letters for facilitating tax payers' electronic interface with the Department. The CBDT has requested everyone to ensure that the above directions are strictly followed.

- Accordingly, w.c.f. 1.4.1988, the settled position is that if the assessee deposits any sum payable by it by way of tax, duty, cess or fee by whatever name called under any law for the time being in force, or any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) or the Act, no disallowance can be made under section 43B of the Act
- The CBDT has issued a press release dated 17.12.2015 stating that section 195 of the Income-tax Act ('the Act') empowers the Central Board of Direct Taxes to capture information in respect of payments made to non-residents, whether chargeable to tax or not. Rule 37BB of the Income-tax Rules has been amended to strike a balance between reducing the burden of compliance and collection of information under section 195 of the Act
- The ITAT has complimented the CBDT for issuing [Circular No. 21/ 2015 dated 10th December 2015](#) and stating therein that all pending appeals of the department with a monetary limit not exceeding Rs. 10,00,000 shall be withdrawn/ not pressed. The ITAT has acted with remarkable alacrity to give effect to the said Circular of the CBDT. Over the weekend and past few days, the Hon'ble Members, Registrar and Bench Clerks have been involved in sorting through thousands of appeals and identifying the ones that qualify for dismissal pursuant to the said Circular
- The CBDT has issued an Office Memorandum dated 10.12.2015 in which it is noted that in a recent decision of the Bombay High Court ([DIT vs. Credit Agricole Indosuez](#)), the manner in which the department files appeals was termed as being "casual and callous". It is noted that there are [other cases](#) where the ITAT and the High Courts have adversely commented on the filing of frivolous appeals by the department. The CBDT has accordingly decided to extend the Collegium system to consider withdrawal of appeals filed in the High Court which are no longer considered prosecutable. The CBDT has specified the responsibilities of the CCIT in each region and also directed that a monthly report of the progress be submitted to it

- With a view to implement [Circular No. 21/2015 dated 10th December 2015](#) issued by the CBDT (which states that even pending appeals of the department with a monetary tax effect of Rs. 10,00,000 or less should be withdrawn/ not pressed), Hon'ble Justice (Retd) Dev Darshan Sud, President of the ITAT, has issued a notice dated 14.12.2015 requesting all representatives to furnish a list of departmental appeals where the tax effect does not exceed the monetary limit of Rs. 10 lakhs and which are covered by the said Circular. It is stated that all possible efforts should be made to furnish such information containing requisite details, viz., appeal number, date of filing, name of the assessee etc. in the office of the Assistant Registrar (Judicial) as expeditiously as possible, preferably by 18th December, 2015.
- The CBDT has issued Notification No. 90/2015 F.No. 142/7/2014-TPL dated 14.12.2015 by which it has amended the Safe Harbour Rule specified in Rule 10D(2A) and specified the information and documents required to be maintained by an eligible assessee
- Pursuant to the CBDT's directives regarding '[Paperless Assessment Proceedings](#)', '[E-Sahyog Project To Avoid Physical Presence Of Taxpayers During Assessment](#)' and '[Redressal of grievances received from Taxpayers by email at Aayakar Sampark Kendra](#)', the CBDT has issued a Notification dated 02.12.2015 by which it has amended the Income-tax Rules, 1962 to provide that for purposes of section 282(1) of the Act, service of notice, summons, requisition, order and other communication may be done by email
- The CBDT has issued a directive dated 02.12.2015 stating that as on 01.11.2015, there were 2.07 lakh returns involving refund claims of Rs.659 crore for AY 2013-14 and 12.90 lakh returns involving Rs.4,837 crore for AY 2014-15 which are still pending for processing and issue of refunds. These returns have not been selected for scrutiny under CASS. It is stated that while reviewing the pendency of refunds, the Revenue Secretary has directed that refunds in respect of cases not selected under CASS and involving refund of less than Rs.50,000 for the assessment years 2013-14 and 2014-15 may be issued as early as possible. Based on this directive, the CBDT has "requested" the Chief Commissioners to "kindly advise" assessing officers to expeditiously process and determine refunds in non-CASS cases having claim of refund of less than Rs.50,000 and issue the same as early as possible. Whether the Assessing Officers will obey the directives of the Revenue Secretary and of the CBDT requires to be seen
- The CBDT has issued Circular No. 20/ 2015 dated 02.12.2015 in which it has explained the entire law relating to the obligation of employers to deduct income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2015-16 under section 192 of the Act and Income-tax Rules, 1962.

CASE LAWS - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- **DHANLAXMI DEVELOPERS vs.DCIT, (2016) 46 CCH 0001 AhdTrib:** When there is no other provision enabling a demand in respect of the levy that has been pointed out to and when it is an admitted position that in the absence of the enabling provision under section 200A, no such levy could be effected, as intimation under section 200A, raising a demand or directing a refund to the tax deductor, can only be passed within one year from the end of the financial year within which the related TDS statement is filed, and as the related TDS statement was filed on 19th February 2014, such a levy could only have been made at best within 31st March 2015.
- **INCOME TAX OFFICER vs. JAIPUR CLUB LTD., (2016) 46 CCH 0006 JaipurTrib:** Merely because Assessee company had entered into transactions with non members and earned profits out of transactions held with them its right to claim exemption on principle of mutuality in respect of transactions held by it with its members was not lost
- **DEPUTY COMMISSIONER OF INCOME TAX vs.VODAFONE MOBILE SERVICES LTD., (2015) 45 CCH 0355 DelTrib:** It is well settled law that no ad hoc disallowance can be made unless AO brings any specific detail on record which may call for any disallowance
- **BAUSCH & LOMB EYECARE (INDIA) PVT. LTD. & ORS. vs.ADDITIONAL COMMISSIONER OF INCOME TAX & ORS., (2015) 94 CCH 0162 DelHC:** When assessee's activities comprised both manufacturing and distribution and percentage of revenue as earned by Assessee from each transaction was in ratio of 60:40, there was no basis for revenue to allege that assessee was only distributor of goods manufactured by its AE.

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

- **(2015) 94 CCH 0156 DelHC:** When Revenue was unable to demonstrate any tangible material to effect that there was international transaction involving AMP expenses between Assessee and its AE, question of determining the ALP of such transaction could not arise.

CORPORATE LAWS - BY SHRI PRADEEP K MITTAL ADVOCATE - 9811044365

- When the statement of the persons/party recorded U/s 40 of FERA has been retracted for his alleged violation of the provisions of the Act and on the very next date, such statement has been retracted by such person on the plea that the same was obtained under threat and coercion, the Department cannot rely upon the said statement and convict the party merely on the basis of the said retracted statement. Amrik Singh Saluja Vs. Union of India 2016 (331) ELT 57 Delhi.
- When the amount, as a pre-deposit, has been made as a condition precedent for hearing of appeal before the Debt Recovery Appellate Tribunal against the order of Debt Recovery Money passing a money decree, such amount is liable to be appropriated against the money decree passed in favour of the bank and such pre-deposit should not be returned to the Appellant Company. Neelima Bagaria Vs. Standard Chartered Bank 2016 (226) DLT 10 Delhi DB.
- The Division Bench of Madras High Court in the case of Kamal Batcha Vs. Dy Director Enforcement Director MANU/TN/3246/2015 has observed that the confessional statement which has been retracted cannot form the basis to maintain the charge that the appellant had contravened the provisions of Section 9(1)(b) of the Foreign Exchange Management Act 1999. Since the Directorate of Enforcement has miserably failed to substantiate their case, presumptions has to be drawn as contemplated under Section 114 of the Evidence Act in favour of the appellant.
- The Division Bench of Himachal High Court in the case of Amy Agro (P) Ltd Vs. State Bank of Patiala MANU/HP/1006/2015 that while filing an appeal before Debt Recovery Appellate Tribunal against the order of DRT, the condition of making pre-deposit in terms of Section 18(1) of the Securitisation Act is mandatory for entertaining any appeal and there is no reason to exempt the appeals arising out of the orders passed by the DRT.
- The Sick Industrial Companies shall not be entitled to protection under Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985 and the coercive proceedings for realization of the amount shall be maintainable for recovery of PF dues of the employees which have earlier been deducted by the companies from the salary of workers/staff. Jaibharat Textile & Real Estate Ltd Vs. RPFCL MANU/DE/4141/2015.
- The Company Court of the High Court is maintainable to determine about the reasonable and fairness of the order of the Board for Industrial & Financial Reconstruction recommending winding up of the sick industrial company. Punjab Tissues Ltd Vs. OL Punjab 2016 (130) CLA (Snr) 3 Punjab & Haryana DB.

**CENTRAL EXCISE - BY SHRI PRADEEP K MITTAL ADVOCATE -
9811044365**

- The appeal shall not ordinarily lie against the Order of CESTAT (which is the final fact finding authority) unless there are substantial question of law. When the findings of the Tribunal are sustainable and are not completely perverse, the appeal U/s 35G shall not maintainable against the Order of CESTAT. CCE Vs. Vishnu & Company Pvt. Ltd.
- Writ petition shall be maintainable for seeking refund of terminal excise duty paid at the time of clearance of cable for being used as a sub-contract to BHEL for a project under International Competitive Bidding (Deemed Export). The directions could be issued in a writ petition to consider the application of the Petitioner and pass appropriate orders within eight weeks. Delton Cables Ltd. Vs. Union of India 2016 (331) 161 Delhi.
- It is a settled law that duty/penalty fastened upon the Company cannot be recovered from its Directors unless there is a specific provision under a particular statute, the action of the Department in forcing the Petitioner to pay sum due from the Company is contrary to law and letter seeking recovery is liable to be quashed. Krishan Kumar Vs. Union of India 2016 (331) ELT 179 Punjab & Haryana.
- The Division Bench of Delhi High Court has held that CESTAT cannot dismiss the appeal of the Department on the contention that the appeal was filed without any application of mind by the committee comprising of Chief Commissioner. Once it is shown that the Committee of Commissioners has met and applied their mind the private party cannot question that there was no meeting and, therefore, the appeal of the Department was incompetent. CCE Vs. Japan Airlines International Company Ltd. 2015 (40) STR 420 Delhi.
- When the excise records and books of account has been audited by the audit party of the department, the second audit party carrying out the audit for the same period or overlapping period, cannot contend that there was deliberate misstatement of fact or suppression of facts so as to invoke the extended period of limitation of five years. Trans Engineers India Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (40) STR
- When the records not produced by the assessee on the contention that there was a fire in the factory for which no Fire Brigade was called nor any intimation was sent to the Central Excise Department nor any particulars of damage due to fire was given, the value of excisable goods could be worked out on the basis of audited balance sheet. The Department is free to invoke the extended period of limitation of five

years. Sharp Carbons India Pvt. Ltd. Vs. Commissioner of Central Excise 2016 (331) ELT 513 Allahabad.

- In case the assessee has not applied for provisional assessment nor intimated to the Department about the existence of the price escalation clause, from time to time, the existence of provisional assessment is not automatic under the Central Excise Act or Rules made there-under, the assessee had to apply for provisional assessment, otherwise, the assessee is liable to pay interest on differential duty paid subsequently as per Rule 7(4) of the Central Excise Rules. Commissioner of Central Excise Vs. Pre-stressed Udyog India Pvt.ltd. 2016 (331) ELT 539 Jharkhand.
- When a common balance sheet has been prepared for two factories of Appellant, one factory manufacturing cloth and the other factory manufacturing chemicals, the clearance of both the factories are required to be clubbed to determine as to whether the total value of sale of both the factories are in excess of SSI exemption limit despite the fact that for both the factories there is separate staff, separate entity and separate entry. Premium Suitings Pvt.Ltd. Vs. Commissioner of Central Excise 2016 (331) ELT 589 Allahabad.
- When the raw material so purchased is exempt from payment of duty and yet if the supplier has paid the duty, the buyer is entitled to take Cenvat Credit under Rule 3 of Cenvat Credit Rules 2004. CCE Vs. Nucom Switchgears Pvt.Ltd. 2016 (331) ELT 593 Tribunal Delhi.
- The charges recovered by the assessee for hologram to produce a particular design as per specification of client, the hologram is a part and parcel of value of finished goods and its value is rightly includible in the assessable value. When the assessee has given the documents during investigation, the Department cannot be heard to say that the investigation was only for the purpose of classification of goods. Sriram Holographics Vs. Commissioner of Central Excise. 2016 (331)ELT 612.

SERVICE TAX - BY SHRI PRADEEP K MITTAL ADVOCATE - 9811044365

- The Bombay High Court has prima facie held that collection of Toll at the Toll Barrier is at par with the Toll Tax, which is a sovereign function and has, therefore, waived the condition of pre-deposit for consideration of appeal filed by the Appellant before the Tribunal. Ideal Builders Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (40) STR 1049 (Bombay).
- The Service Tax paid in relation to commission paid to Commission Agent in relation to sale of its products, the party is entitled to take Cenvat Credit and can utilize the same for payment of excise duty on

clearance of final product. Vishal Pipes Ltd. Vs. Commissioner of Central Excise 2015 (40)STR 1091 (Tribunal).

- A deduction of small amount of Rs. 276/- towards canteen charges from the employees of the Company who have been provided the canteen facility by the Appellant Company and the Appellant Company is entitled to Cenvat Credit of Service Tax under the head Outdoor Catering Services and has been provided canteen services to the employees. CCE Vs. Neel Auto Pvt Ltd. 2015 (40) STR 1097 Tribunal.
- The cost incurred towards preparation of Hoardings, Bill Boards and the Conveyance cannot form part of the gross amount over which the Service Tax is required to be paid. While calculating the amount of service tax, such media cost is required to be excluded. Gray Worldwide India Pvt. Ltd. Vs. Commissioner of Service Tax 2015 (40) STR 1104 Tribunal.
- The Division Bench of CESTAT in the case of Petrolite Araldite (P) Ltd Vs. CCE MANU/CC/0230/2015, while relying upon Supreme Court Larger Bench decision in the case of Commissioner of Customs, Mumbai v. Can Pack India Pvt. Ltd. (2015 (TIOL)2015-CUS LB) held that the technical knowhow, drawing and design fee and engineering services fee, are not includable in the transaction value of the imported goods.
- When the input has been procured through pipeline set up between Barbil plant and Jajpur plant, service tax paid on laying pipeline would be input service and, therefore, cenvat credit would be admissible. Bhahmani Rover Pillets Ltd. Vs. Commissioner of Central Excise 2015 (40) STR 471 Tribunal.
- The Appellant Company has been collecting toll on behalf of NHAI and retaining the commission out of the total amount collected as toll, the Appellant is neither promoting nor marketing nor selling the goods produced by the client and, therefore, such services shall not fall within the purview of business auxiliary service. Ideal Road Builders Pvt. Ltd. Vs. Commissioner of Service Tax 2015 (40) STR 480 Tribunal Mumbai.
- When the excise records and books of account has been audited by the audit party of the department, the second audit party carrying out the audit for the same period or overlapping period, cannot contend that there was deliberate misstatement of fact or suppression of facts so as to invoke the extended period of limitation of five years. Trans Engineers India Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (40) STR 490 Tribunal, Mumbai.
- When the Regional Office has distributed the credit to the factories, the same cannot be denied on the contentions that it is only head office or corporate office who is entitled to distribute the cenvat credit to the

factory in view of the fact that in Rule 2(m) of Cenvat Credit Rules, 2004, the term office has been used, which would include even the Regional Office. India Cements Ltd. Vs. Commissioner of Central Excise 2015 (40) STR 497 Tribunal.

- When the Appellant Company is engaged in rendering port service, healthcare with ambulance facility is mandatory requirement, insurance of motor vehicle again is a mandatory requirement, rent a cab service engaged for movement of officer within the port area, works contract in relation to construction activity, consulting engineers service, all are entitled to Cenvat Credit. The services liable to tax or not or eligible for exemption cannot be determined by the receiver of service. Once the service tax has been paid by the provider of service, the service receiver is entitled to avail the Cenvat Credit. Kakinada Sea Ports Ltd. Vs. CCE 2015 (40) STR 509 Tribunal.
- The input service in respect of car parking facility availed by the Appellant at their Head Office for parking of cars of management of the Appellant Company, this activity is related to business of the Company and, therefore, Cenvat Credit is admissible. Goodyear India Ltd. Vs. Commissioner of Central Excise 2015(40) STR 546 Tribunal Delhi.

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

- The Tribunal in the case of Ramachandra Vs. Dy Director Enforcement Director MANU/ML/0042/2015 has observed that since the appellant has failed to show that the advance of Rs. 33 lakh received by him from Salve Regina Charitable Trust out of proceeds of crime, was returned by him to Smt. Regina Seelan and further failed to show that the subject property (which has been provisionally attached being purchased out of proceeds of crime) do not confirm to the definition of proceeds of crime in accordance with the provisions of section 2(u) of the PMLA and therefore the same is not liable to attachment under PMLA. The appeal stands dismissed. It is a fundamental requirement that the party must prove that the assets has not been acquired, out of the proceeds of crime.
- The Appellate Tribunal in the case of S K Sharma Vs. Directorate of Enforcement MANU/ML/0019/2015 has observed that at the adjudication stage, it is important to consider that right to property is a valuable right which is restricted on a prima facie view of the Complainant arrived at on the basis of material in his possession and without affording any opportunity to the defendant/party whose property is provisionally attached. Adjudication proceedings under the provisions of section 8 of PMLA is the first stage where for the first time an opportunity is granted to defendant to put up his defence in order to explain and to show that the property attached is acquired out of legitimate means. Section 8(4) of PMLA provides that on confirmation of

order of provisional attachment, the Enforcement Director shall forthwith take possession of the property attached under section 5 of PMLA. Thus, if an order confirming provisional attachment of property is passed without giving reasonable opportunity, the defendant will be deprived of his valuable rights in the property under attachment.

SEBI LAWS - BY SHRI PRADEEP K. MITTAL-9811044365

- SEBI, in an ex-parte proceeding, directed impounding of unlawful gains of Rs. 1.60 crores from 'insiders' (dominant shareholder of Bank of Rajasthan's and their relatives for insider trading in its shares, prior to announcement of merger with ICICI Bank Ltd.('ICICI'). Immediately signing of agreement for merger of Bank of Rajasthan with ICICI. The insiders were having price sensitive information and indulged in purchase of shares and made unfair gain. The SEBI observed that it is pertinent to make each of these 7 persons/entities, jointly and severally, liable for the undue profits.
Order was passed by Mr. Prashant Saran, Wholetime Member, SEBI [LSI-898- SEBI-2016-(MUM)]

The Calcutta HC holds that transfer of shares pursuant to an order sanctioning amalgamation scheme does not require compliance of Section 108(1) of Cos. Act, 1956 (relating to 'transfer of shares'). Likewise, the transferee shall meet the qualification u/s 399 of Companies Act, 1956. Without shares have actually been transferred, the transferred shall be entitled to file petition under Section 397 of Companies Act, 1956. LSI-894-HC-2015 (CAL).

CIVIL LAWS - BY SHRI PRAVEEN K. MITTAL-9810826436

- The Bombay High Court in the ONGC Ltd Vs. Essar Oil Ltd MANU/MH/0028/2016, while relying M/s. Continental Transport Organization Pvt. Ltd. and also judgments of Supreme Court and High Court that liquidated damages cannot be recovered if the damages or loss has not suffered by the party further relying upon Kailashnath Associates vs. Delhi Development Authority, (2015) SCC Online 19.
- In case the consideration towards sale of immovable property, as shown in the sale deed, is less than the circle rate fixed by the State Government, the Registrar is duty bound to register the sale deed and shall then forward the sale deed to the Collector of Stamps for determination of value and upon determination and payment of duty and penalty, the sale deed not shall be released to the person concerned and would be released only upon payment of stamp duty and penalty so determined. Manu Narang Vs. NCT of Delhi 2016 (226) DLT 1 Delhi DB.

- In a case where amount sought to be recovered has to be arrived at by having a look at different documents, transaction of different dates, entries in the statement of account, such suit cannot be filed as a summary suit under Order 37 of CPC. The High Court has imposed a cost of Rs. 5 lakhs upon the Plaintiff since the manifestly the suit was not maintainable under Order 37 CPC and yet, the Plaintiff has filed the said suit and wasted the judicial time and hence the cost of Rs. 5 lakhs is permissible. G.E.Capital Services Vs. Dr. K.M. Veerappa Reddy 2015 Volume 224 DLT 1 Delhi Hight Court.
- In a suit for possession, it is not legally required to serve a notice terminating the tenancy in view of the fact that the filing of suit for possession and issuance of summon by the Court on the said suit itself amounts to termination of tenancy. At the same time, once the tenancy has lapsed, there is no need to serve a notice terminating the tenancy. Nitin Jain Vs. Geeta Raheja 2015 Volume 224 DLT 335.
- The Delhi High Court in the case of J M Construction (P) Ltd Vs. Krishna Sachdev MANU/DE/0017/2016 has held that the issuance of repeated legal notices/public notices does not extend the period of limitation and once the suit is already barred by limitation in the year 2002, either by the service of notice or any admission in reply after the expiry of limitation, no benefit can be derived by the plaintiff under Section 18 of the Limitation Act, 1963.

ARBITRATON LAW - BY SHRI PRAVEEN K. MITTAL-9810826436

- On a petition under Section 34 of Arbitration and Conciliation Act, 1996 the court cannot examine the reasonableness of the reasons and also cannot hold that another view is possible. The jurisdiction of the court is very limited. Central Mine Planning and Design Institute Ltd Vs. Anupam Rai 2016(130) CLA1 (Bom).
- The order passed by the Court under Section 9 of the Arbitration & Conciliation Act, 1996 is a appealable order and a appeal under Section 37 of the said Act shall be maintainable. The Scope of Section 37 also encompasses interim order passed under Section 9. ICICI ltd Vs. IVRCL Ltd 2016(130) CLA (Snr) 2 AP.
- When a vehicle has been obtained through hire purchase from a bank or financial institution and in the event of default, the such lender is entitled to appoint receiver who is competent to take possession of such event if the borrower does not payment within the further time allowed by the court and would also be permitted to sell the vehicle without the permission of Sole Arbitrator as appointed in accordance with the loan

agreement. Kotak Mahindra Bank Ltd Vs. Kamal Chauhan 2016 (226) DLT 410.

- When Agreement to Sell, GPA and Will and other usual documents executed in the year 1994 (which were got executed for the purpose of sale of immovable property in Delhi) and are now sought to be declared null and void (being executed under mis-representation and fraud) by filing a Suit for Declaration in the year 2011, such suit is patently barred by time being filed beyond a normal period of three years and hence, at the threshold, such suit is liable to be dismissed on a application under Order 7 Rule 11 of CPC. Sushil Yadav Vs. Valley View Developers (P) Ltd 2016 (226) DLT 373. DHC.

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