

RNM ALERT

ISSUENO.18

May-June 2009

www.rnm.in



U.N. Marwah

Dear Readers,

The Union Budget for the financial year 2009-10 is expected on July 3, 2009. Some of the major sops sought are (1) Removal of specific duty on big cars, tax sops on vehicles for rural markets and revival of the duty-free credit scheme for quantum growth in exports (2) extension of the special tax sops for IT firms by another three years (3) banks have sought restoration of income tax exemption on the interest payable on funds borrowed from foreign lenders (4) increase of the exemption slab for individual taxes or re-introduction of standard deduction on salary income.

The Competition Commission of India (CCI) has during May 2009 become fully operational with the setting up of the Appellate Tribunal, appointment of various members and coming into force of various Regulations. The commission seeks to uphold the Competition Law prevalent in India which prevents anti-competitive practices with minimal intervention. With Corporate India moving forward with consolidations, Mergers and Acquisitions the role of the CCI has become important. The CCI shall prohibit anti-competitive agreements and abuse of dominance, and also regulate combinations (mergers or amalgamations or acquisitions) through a process of inquiry/investigation.

Some further sections of the new LLP law have also been notified, this past month which deal with conversions of partnerships and companies into LLP's. However, unless the taxation code for LLP's is notified the intention of the government to promote this new form of business will not realize its full potential.

The e-governance initiative of the MCA is now spreading to the Office of the Official Liquidator also with the launch of the new e-portal for liquidation. This has been a long standing demand of corporate India to simplify the exit route for failed business.

With the improvement of the overall sentiment, finance has started flowing in the system more freely and sectors such as infrastructure, power are now getting more funding.

U.N. Marwah
Managing Partner
On behalf of the Editorial Team

CONTENTS

Direct Tax

- ***Leading I.T. Case Laws***
 - Exemptions 4
 - Set off or carry forward and set off 5
 - Profits & Gain from Business & Profession 5
 - Procedure for assessment 5

- ***Latest Notifications/ News***
 - Derivative transactions on MCX no longer Speculative transactions 5
 - AAR rules on whether a liaison office can constitute a permanent establishment 6

Indirect Tax

- ***Custom Central Excise & Service Tax***

- ***Latest Case Law***
 - Penalty On Partners for Smuggling Goods 7
 - Transaction Value Cannot Be Disregarded Without Reason 7
 - Shortage Of Stock Is Not An Act Of Clandestine Removal If There Is Not Mens Rea Present 7
 - Relevant date of issue of SCN is Filling of RT-12 return 8
 - No Service Tax If Service Provider and Receiver Are Same Legal Entity 8
 - Full Cenvat credit to security agency service 9
 - Service Tax liability of non-resident only after 1.1.2005 9
 - Explanation to section 65(19)(ii) not retrospective 10
 - Only cooking & serving is not outdoor catering 10
 - Levy of penalty twice the duty demand is not as per law 10
 - Only hotel hall, not hotel room subject to service tax 11

- ***Latest Notifications/ News***
 - Tariff value of brass scrap and poppy seeds 11
 - Rate of exchange of conversion of each of the foreign currency 11
 - Safeguard measure against excessive import from Singapore 12

Company Law

- ***Latest Notifications/ News***
 - Changes to Investor Complaint e Form 13
 - Limited Liability Partnership Act, 2008-Enforcement of sections 55 to 58, Second Schedule, Third Schedule and Fourth Schedule 13
 - Limited Liability Partnership Rules, 2009-Enforcement of Rules 32 and 33 and Rules 38 to 40 13

- Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009 13
- New online portal for company liquidators 14
- Companies (Central Government's) General Rules and forms (Second Amendment) Rules, 2009 (Revision of e-forms 19, 20, 20A, 44 and 49) 14

COMPETITION & ECONOMIC LAWS

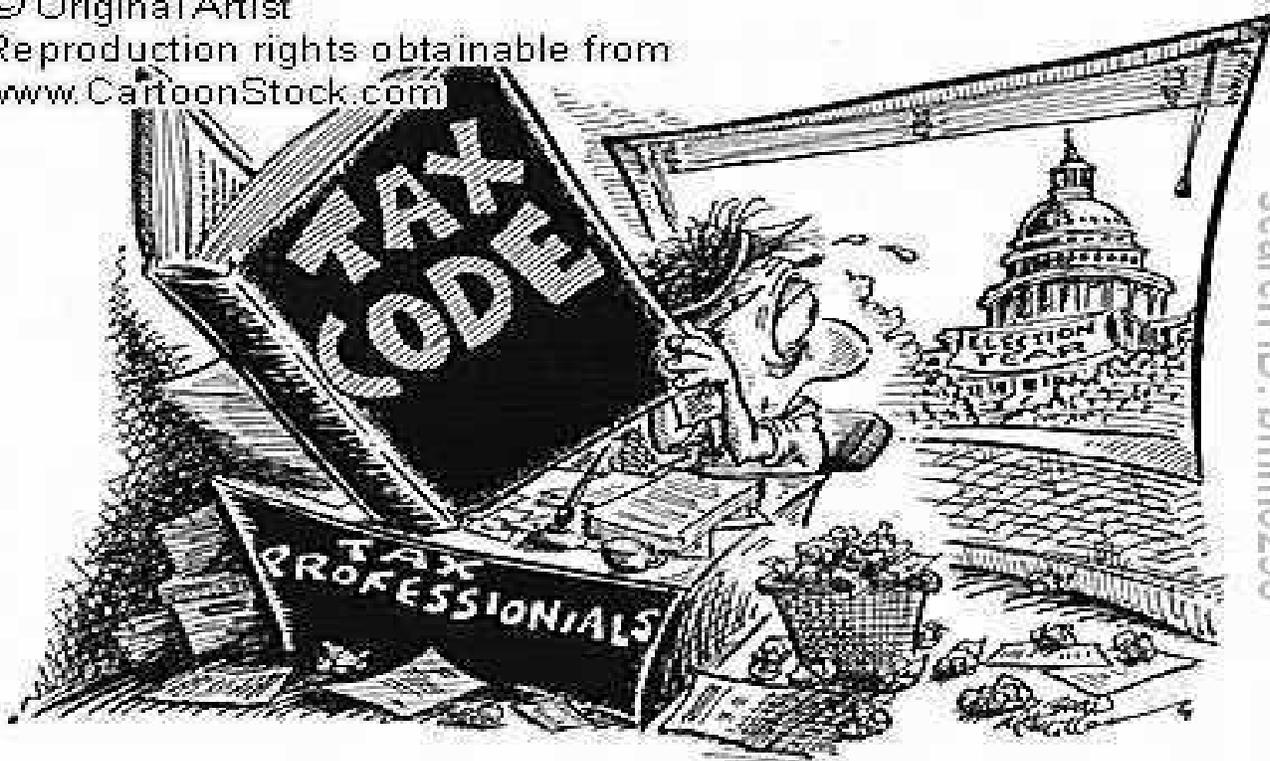
- ***Latest Notifications/ News***
 - Notification of section 3 & 4 of Competition Act, 2002 15
 - Establishment of Competition Appellate Tribunal 15
 - The Competition Act, 2002, commencement of Act - Enforcement of certain sections 15
 - Competition (Amendment) Act, 2007 - Enforcement of certain section 15
 - Competition Commission of India (General) Regulations, 2009 15
 - Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009 15
 - Special Economic Zones (Second Amendment) Rules, 2009 - Amendment in rule 2, 5 and 19 16
 - Establishment of competition commission of India 17

FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATIONS

- ***Latest Notifications/ News***
 - Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2009 - Amendment in Schedule III; substitution of item 4 and 15; insertion of item 17 18
 - Press Note No. 5 (2009): Guidelines for Foreign investment in Commodity Exchanges 19
 - Applicability of NBFCs-ND-SI regulations 19
 - Prevention of Money-laundering (Amendment) Act, 2009 - Commencement of Act - Notified Date 19

DIRECT TAX

© Original Artist
Reproduction rights obtainable from
www.CartoonStock.com



CASE LAWS

Exemptions

Expenditure incurred in relation to income not includible in total income

Section 14A is a special provision which deals with disallowance of expenditure

incurred by assessee in relation to income which does not form part of total income under Act and thus, in view of specific provisions of section 14A, expenses falling under any head or section which are otherwise deductible as business expenditure or under other respective heads, would call for disallowance to extent to which those expenses have been incurred in relation to income exempt from tax. For purpose of section 14A what

is relevant is to work out expenditure in relation to exempt income and not to examine whether expenditure incurred by assessee has resulted into exempt income or taxable income – [Income-tax Officer, Ward 6(2)(2), vs. Daga Capital Management (P.) Ltd. [2009] 117 ITD 169 (MUM.)(SB) [IT APPEAL NOS. 8057 (MUM.) OF 2003, 183, 1372 AND 2048 (DELHI) OF 2005]

Set off or Carry forward and set off of losses

Allowability of loss to be carried forward and set off against future income u/s 80 of IT Act, 1961

Provision of section 80 permits an assessee to carry forward a loss and seek its set off under section 71(1) or 73(2) or sub-section (1) of section 74 or 74A (3) except when, the loss has not been determined in pursuance of a return filed in accordance with provisions of sub-section (3) of section 139 – [CIT vs. Nalwa Investment Ltd. ITA NO. 335/2006]

Profits and Gains from Business and Profession

Limitation of time is not a determining factor in matters relating to remission or cessation of liabilities

When the assessee continues to reflect or record the liabilities as still payable to the creditors and he decides

not to write them off unilaterally, the AO has higher levels of responsibility and has to establish with evidence that the said book entries are wrong or not bona fide for invoking the provisions of section 41(1) of the Income-tax Act, 1961 – [DSA Engineers (Bombay) vs. ITO ITA NO.5354/MUM/2007]

Procedure For Assessment

Jodhpur ITAT on section 154 read with section 143(1) and 80HHC of the Income-Tax Act, 1961 -

Section 154 read with section 143(1) and 80HHC of the Income-tax Act, 1961-Rectification of mistakes apparent from records-Assessment year 2002-03-Assessee filed its return for relevant assessment year and had claimed deduction under section 80HHC in respect of premium received on sale of Duty Entitlement Pass Book (DEPB) credit. Assessing Officer allowed said claim and completed assessment by issuing intimation under section 143(1). Subsequently, Assessing Officer in exercise of his power under section 154

withdrew deduction allowed under section 80HHC by taking note of Taxation Laws (Amendment) Act, 2005. Whether Assessing Officer cannot exercise his power under section 154 to amend an intimation under section 143(1) - Held, yes - Whether in view of above position Assessing Officer was precluded from making any amendment in intimation under section 143(1) even though there was a mistake of law or fact in claiming deduction under section 80HHC - Held, yes [Lotus Gums & Chemicals vs. Income Tax Officer IT Appeal No. 800 (Jodh.) of 2007]

➤ Latest Notification/ News

Derivative Transactions on MCX no longer speculative transactions

In exercise of the powers conferred by clause (ii) in the Explanation to clause (d) of the proviso to sub-section (5) of section 43 of the Income-tax Act, 1961 (43 of 1961),

read with rule 6DDB of the Income-tax Rules, 1962, the



Central Government hereby notifies MCX Stock Exchange Ltd. as a recognized stock exchange for the purpose of the said clause with effect from the date of publication of this notification in the Official Gazette.

The said MCX Stock Exchange is a subsidiary of the Multi Commodity Exchange of India Ltd. (MCX) and deals with currency derivative instruments useful for hedgers, investors and arbitrageurs. [Notification No. 46/2009, dated 22-5-2009]

AAR rules on whether a liaison office can constitute a permanent establishment

This alert summarises a recent ruling of the Authority for Advance Ruling (AAR) [2009-TIOL-12-ARA-IT] in the case of K.T. Corporation (applicant) on the issue of whether a Liaison Office (LO), acting as a communication channel, will constitute a Permanent Establishment of the Applicant under the Double Taxation Avoidance Agreement between India and Korea (Tax Treaty). Considering the facts of the

case, the AAR held that the activity carried on by the LO in India are in 'aid' or 'support' of the main activities and are preparatory and auxiliary in nature. Hence, the LO will not constitute a PE of the applicant.

INDIRECT TAX

Customs, Central Excise & Service Tax

➤ Case Laws

Penalty on partners for smuggling goods

Import and transportation of
smuggled goods of the third



country from Nepal is prohibited in terms of Notification No. 9/96-Cus., dated 22-1-1996. In this case transporter knowingly aided and abetted in handling, keeping and transporting smuggled goods “made in Malaysia” from Nepal. The Tribunal held that such goods are liable to confiscation and imposition of penalty on partners of transporter company is justified. [Tilak R. Lodaya vs. Commissioner of Customs (Preventive), Mumbai, 2009(237) ELT 692 (Tri-Mumbai)]

Transaction value cannot be disregarded without reason

In this matter the Tribunal held that the Section 14 of the Customs Act envisages, normally acceptance of the transaction value. When the transaction value is to be disregarded, the reasons for disregarding the transaction value have to be clearly spelt out. After giving reasons for rejecting the transaction value, the value has to be determined under the Valuation Rules by going sequentially through Rule 4 to Rule 8. In this case the original authority has not disclosed the reasons for disregarding the transaction value except saying that the

importer-respondents and the level of contemporaneous import sought to be compared has not been taken into account. Admittedly the respondent has made subsequent imports at the same price and the same has been accepted. Further, no allegation that the declared price by the respondent is a manipulated one has been made. [Commissioner of Customs, Amritsar vs. Auro Spinning Mills, 2009(237) ELT 473 (Tri-Del.) Valuation (Customs)]

Shortage of stock is not an act of clandestine removal if there is no mens rea present

The central excise officers visited the Respondent's factory and conducted stock verification. The said officers found shortage of stock of inputs. The Respondent admitted the shortage and deposited the duty on the spot. It was presumed that inputs were clandestinely removed and the Adjudicating Authority confirmed the demand of duty and appropriated the said amount as deposited by them and also imposed a penalty of equal amount under section 11AC of the Central Excise Act, 1944.

The Tribunal found that no material of fraud, willful suppression of facts or misstatement of facts, etc. on the part of the Respondent. The Tribunal also found that the Hon'ble Punjab and Haryana High Court in the case of Commissioner of Central Excise, Ludhiana v Omkar Steel Tubes (P) Ltd. 2008 (221) ELT 200 (P&H) held that the allegation of mens rea has to be present. It has been held that there must be a finding to be recorded regarding mens rea or any intention on the part of the assessee that the goods were removed with the intention to evade payment of duty. In the present case, no material were produced that the Respondent removed the goods clandestinely. [Commissioner of Central Excise, Jaipur vs. Garg Ispat Udyog Ltd., 2009 (237) ELT 546 (Tri-Del.)]

'Relevant date' for issue of show cause notice is Filing of RT-12 Return

The issue in this case was relating to the relevant date of issue of Show Cause Notice. In this case period for which show cause notice issued relating to July 1997 to Sep

1997 and show cause notice was issued on 20-3-1998. The appellants submitted that no notice under Section 11A of Central Excise Act, 1994 issuable after expiry of period of six months as matter was within knowledge of Department.

The Tribunal held that Section 11A(3)(ii)(a) wherein it is stated that: "relevant date" means - in the case of excisable goods on which duty of excise has been levied or paid or has been short-levied or short paid - the date on which RT-12 return is filed. Here RT-12 is a periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed. In this matter the SCN was issued within six months from date of filing of RT-12 returns. Thus, revenue justified in issuing SCN under Section 11A. [Hilltop Rubbers (P) Ltd. vs. Commissioner of C. Ex. Meerut, 2009 (237) ELT 666 (tri.-del.)]

No service tax if service provider and receiver are same legal entity

The Assistant Commissioner of Central Excise demanded

service tax along with applicable interest from M/s. Chemplast Sanmar Ltd. Plant-III towards "technical testing and analysis services" rendered by it.



The original authority also imposed penalties on under various sections of the Finance Act, 1994. It had rendered the impugned service to its sister unit at Karaikkal. The taxable value was the amount reflected in the debit notes raised on the sister unit

by the appellants. To be precise, the activity involved was testing of cylinders.

The appellants submits that the service involved was rendered by one unit of M/s. Chemplast Sanmar Ltd. to its other unit. Provider of service and recipient of service were parts of the same legal entity. M/s. Chemplast Sanmar Ltd. had not rendered the impugned service to anyone else to be liable for payment of tax on such service. In the decision of this Tribunal in Precot Mills Ltd. Vs. Commissioner of Central Excise, Trichy, 2006 (2) STR 495 (Tri.-Bang.) 2006-TIOL-818-CESTAT-BANG, wherein it was held that for service tax to be leviable, the provider and the client of the service had to be different legal entities.

The Tribunal found that the point raised by the ld. counsel for the appellants is valid. Service tax could be levied when any service is rendered by one person to another. In the instant case, the provider of the service and the recipient of the service are the same legal entity viz., Chemplast Sanmar Ltd. Raising debit notes by one unit of the appellants on its another unit are required for accounting

purposes and to assess the performance of various units of the appellants as separate profit centres. The Tribunal found that the appellants have made out a prima facie case against the demand and the penalties. Accordingly, there will be waiver of predeposit and stay of recovery of the adjudged dues pending decision in the appeal. [Chemplast Sanmar Ltd vs. Cce, Salem, 2009-Tiol-802-cestat-mad Date of Decision : 02.01.2009]

Full CENVAT credit to security agency service

The question to be considered in this case was whether the Insurance on company vehicles were admissible to them as 'input service' as defined under Rule 2(1) of the CENVAT Credit Rules, 2004. The Tribunal found that this credit was taken on the Insurance premium paid in respect of certain company vehicles. In this matter the Tribunal decided some Cenvat Credit related issues. One issue was related with the input credit of security agency service. The security agency services were provided not only for residential colony but also for plant area, mining area. The service is covered among the 16 services

specified under Rule 6(5) of CENVAT Credit Rules for availment of full credit where the service is common for both ineligible and eligible purposes. The Tribunal held that in such case the credit is admissible.

In another issues, some portion of input services were availed prior to 10.09.2004 and other portion later on. The Tribunal held that in such case neither entire credit can be denied nor entire credit can be availed. The decision of the Tribunal was "the appellants are eligible for proportionate credit relatable to period from 10.09.2004 to 31.08.2005 and therefore this amount will have to be worked out." [M/s GHCL Ltd vs. CCE, Bhavnagar, 2009-Tiol-850-Cestat-Ahm date of Decision : 22.04.2009]

Service tax liability of non-resident only after 01.01.2005

In this matter the Tribunal held that Service tax leviable on taxable service received from non-resident or from outside India, who does not have any office in India is taxable only from 1.1.2005. Issue already decided in favour of assessee's by another Larger Bench in

Hindustan Zinc Ltd 2008-TIOL-1149-CESTAT-DEL-LB. [M/s Molex (India) Ltd vs. Commissioner of Central Excise (Appeals), Bangalore, 2009-Tiol-852-cestat-bang Date of Decision: 24.02.2009]

Explanation to section 65(19) (ii) is not retrospective

In this matter the Tribunal held that “When we look into express provision of law contained in the explanation inserted by Finance Act, 2008 to sub-clause (ii) of Section 65(19) of the Finance Act, 1994 w.e.f. 16.05.08, prima facie we are of the view that such a provision may not be retrospective.” For the quick reference the inserted explanation is as follow:-

“Explanation for the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “service in relation to promotion or marketing of service provided by the client” includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo.”[M/s N V Marketing Pvt Ltd vs.

Commissioner of service tax, Delhi, 2009-tiol-861-cestat-del]

Only cooking & serving is not outdoor catering

In this case the relevant facts are that the appellant, in terms of a contract with Eicher Tractors was engaged in preparing and serving food items in the premises of M/s Eicher Tractors. As per agreement, all facilities including space for the canteen, kitchen stores, sleeping room, lunch room, table, stools and other fixtures and also electricity, gas were provided by Eicher Tractors.



The appellant's job was to prepare food items in the premises of Eicher Tractors and supply to their employees

during the specified hours and at rates specified by the company. The original authority has held that the appellant was providing services as outdoor caterer and confirmed demand of service tax and imposed penalties and the said order has been upheld by the Commissioner (Appeals). The Tribunal held that in the present case, on perusal of the agreement, we find that the entire facilities relating to maintenance of canteen including furniture, utensils, and also gas, electricity have been provided by the company itself. The appellant has engaged himself merely in preparation and serving the food items at the company premises. The activities undertaken by the appellant cannot be held to fall under the category of outdoor catering service.

[Rajeev Kumar Gupta vs. Cce, Jaipur, 2009-Tiol-864-cestat-del Date of Decision: 26.03.2009]

Levy of penalty twice the duty demand is not as per law

In this matter the Tribunal found that the lower authority has imposed the penalty equal to twice the amount of tax determined which is harsh.

Law provides the maximum penalty to be equal to the amount of tax determined. As such, twice the penalty imposed under two different sections is not warranted.

[M/s Industrial Security Agency vs. Cce, Allahabad, 2009-Tiol-868 cestat-del Date of Decision : 24.04.2009]

Only hotel hall, not hotel room subject to service tax

In this case the Tribunal held that a prima facie view was taken at the stay stage that the Appellants are not liable to pay Service Tax in respect of the charges recovered for renting of the hotel. The only submission by the Revenue now is that the cited decision in the case of Rajmahal Hotel Vs. CCE reported in 2006 (4) STR 370 = (2006-TIOL-1339-CESTAT-DEL) supports the Revenue's case. However, we find that the said decision only authorises levy of Service Tax on renting of halls attached to the hotel but not in respect of renting of the hotel rooms. [M/s Merwara Estates vs. CCE, Jaipur 2009-tiol-871-cestat-deldate of decision : 29.04.2009]



➤ Latest Notification/ News

Tariff value of brass scrap and poppy seeds

Tariff value of brass scrap and poppy seeds have been hiked upto US \$ 2600 and 4253 per Metric Tonne respectively. [Vide Notification No.51/2009-Cus.(N.T.), dated 15-5-2009]

Rate of exchange of conversion of each of the foreign currency

The Central Board of Excise and Customs determines that the rate of exchange of conversion of each of the foreign currency specified in column (2) of each of Schedule I and Schedule II annexed hereto into Indian currency or vice-versa shall, with effect from 1st June, 2009 be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods. [Vide Notification No. 54/2009 - Customs (N.T.) dated: 27th May, 2009]

SCHEDULE-I

S. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	37.50	36.45
2.	Canadian Dollar	42.70	41.60
3.	Danish Kroner	9.05	8.75
4.	EURO	67.20	65.45
5.	Hong Kong Dollar	6.20	6.05
6.	Norwegian Kroner	7.60	7.35
7.	Pound Sterling	76.30	74.40
8.	Swedish Kroner	6.40	6.25
9.	Swiss Franc	44.25	43.15
10.	Singapore Dollar	33.15	32.35
11.	US Dollar	47.90	47.00

SCHEDULE-II

S. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	50.85	49.45

Safeguard measure against excessive import from Singapore

- The Central Government shall appoint a Director-General (Safeguard).
- The Director-General shall, on receipt of a written

application by or on behalf of the domestic producer of like article or directly competitive article, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by increased import of an article

in absolute terms due to preferential treatment under the Trade agreement. [vide Notification No. 50/2009-CUSTOMS (N.T.) dated 12-5-2009]

COMPANY LAW

➤ Latest Notification/ News

Changes to Investor Complaint e-Form

A separate option namely “non filing of return of cessation of a director in Form 32” in field at serial number 3 “Nature of complaint” has been added in the Investor Complaint Form.

To obtain the particulars of the director for whom return of cessation is not filed by the company a new field at serial number 5 has also been added. In the Form, a new attachment namely “In case complaint is in respect of non filing of return of cessation of a director, correspondences with the company with respect to the cessation” has been added.

Limited Liability Partnership Act, 2008- Enforcement of sections 55 to 58, Second Schedule, Third Schedule and Fourth Schedule

The Central Government hereby appoints 31-5-2009 as the date on which the provisions of sections 55 to 58, Second Schedule, Third Schedule and Fourth Schedule of the said Act related to conversion of Partnership Firms/ Private Companies/ Unlisted Public Companies into Limited Liability Partnership shall come into force. [Published in the gazette of extraordinary, part ii, section 3, sub-section (i)] Government of India, Ministry of Corporate Affairs notification New Delhi, vide notification no s.o.1323 (e) dated 22.05.2009]

Limited Liability Partnership Rules, 2009- Enforcement of Rules 32 and 33 and Rules 38 to 40

The Central Government hereby appoints 31-5-2009 as the date on which rules 32 and 33 and rules 38 to 40 of Limited Liability Partnership Rules, 2009 related to conversion of Partnership Firms/ Private Companies/ Unlisted Public Companies into Limited Liability Partnership shall come into force. [Published in the Gazette of extraordinary, part ii, section 3, sub-section (i)] Government of India Ministry of Corporate Affairs notification New Delhi, vide notification no s.o.1324 (e) dated 22.05.2009]

Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009

The SEBI has notified the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009 which will be effective from 19th day of May, 2009. The said regulations cover the following i.e. Establishment, amount to be credited and utilization of Investor Protection and Education



Fund, Advisory Committee- its Constitution, functions, Meetings and Expenses and Investment, maintenance of accounts and audit of accounts etc. [Published in the gazette of extraordinary, part ii, section 4, sub-section (i) Government of India, Securities and Exchange Board of India, Mumbai, vide notification no. lad-nro/gn/2009-10/05/163525. dated 19.05.2009]



New online portal for Company Liquidators

In order to bring the liquidation process online, the Ministry of Corporate Affairs (MCA) has launched a new official website for company liquidators on 29th May, 2009. This covers all the office of official liquidators present in India. The website address is www.companyliquidators.gov.in

Companies (Central Government's) General Rules and forms (Second Amendment) Rules, 2009 (Revision of e-forms 19, 20, 20A, 44 and 49)

The following new forms have been inserted effective from 31.05.2009:-

Form 19 (Declaration of compliance with the provisions of section 149(1) (a) (b) and (c) of the Companies Act, 1956)

Form 20 (Declaration of compliance with the provisions of section 149(2) (b) of the Companies Act, 1956)

Form 20A (Declaration of compliance with the provisions of section 149(2A) or of section 149 (2B))

Form-44 (Documents delivered for registration by a foreign company)

Form-49 (Return of alteration in the charter, statute or memorandum and articles of association, address of the registered or principal office and directors and secretary of a foreign company)

[Published in the gazette of extraordinary, part ii, section 3, sub-section (i)] Government of India, Ministry of Corporate Affairs notification New Delhi, vide notification no G.S.T. 257 (e) dated 17.05.2009]

COMPETITION & ECONOMIC LAWS

➤ Latest Notification/ News

Notification of section 3 & 4 of Competition Act, 2002

The Central Government has notified w.e.f. 20th May, 2009, the provisions of the Competition Act, 2002 relating to anti-competitive agreements (section 3) and abuse of dominant position (section 4) along with other related and miscellaneous provisions, to enable the Competition Commission of India to enforce these provisions of the Competition Act, 2002.

Establishment of Competition Appellate Tribunal

The Central Government has notified w.e.f. 20th May, 2009, the establishment of Competition Appellate Tribunal headed by Dr. Justice Arijit Pasayat, Judge (Retd.), Supreme Court of India, to deal with the appeals against the decisions of the Competition Commission of India and also adjudicate on compensation claims. Dr. Justice Arijit Pasayat

joined as Chairperson, Competition Appellate Tribunal on May 20, 2009.

The Competition Act, 2002, commencement of Act - Enforcement of certain sections

The Central Government hereby appoints the 20th May, 2009, as the date on which sections 3, 4, 18, 19, 21, 26, 27, 28, 32, 33, 35, 38, 39, 41, 42, 43, 45, 46, 47, 48, 54, 55 and 56 of the said Act, shall come into force. [Notification No. SO 1241(E) Dated 15-5-2009]

Competition (Amendment) Act, 2007 - Enforcement of certain section

The Central Government hereby appoints the 20th May, 2009, as the date on which sections 3, 10, 13, 15, 16, 19, 20, 21, 25, 26, 28, 31, 33, 34, 35, 36, 38, 39 and 43 (53B, 53N, 53O, 53P, 53Q, 53R, 53S, 53T and 53U) of the said Act, shall come into force. [Notification No. SO 1242(E) Dated 15-5-2009]

Competition Commission of India (General) Regulations, 2009

In exercise of the powers conferred by section 64 of the Competition Act, 2002 (12 of 2003) the Competition Commission of India hereby makes the Competition Commission of India (General) Regulations 2009 effective from 22.05.2009. [Notification No R-40007/6/Reg-General/Noti/04-CCI Dated 22-5-2009]

Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009

In exercise of the powers conferred by section 64 read with sub-section (1) of section 22 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009 effective from 22.05.2009 [Notification No. R-

40007/6/Reg-Meeting/Noti/04-CCI
Dated 22-5-2009]

Special Economic Zones (Second Amendment) Rules, 2009 - Amendment in rule 2, 5 and 19

proposals for broad-banding, diversification, enhancement of capacity of production, change in the items of manufacture or service activity, if it meets the requirements of rule 18 :

1. In the **Special Economic Zone Rules, 2006**, (hereinafter referred to as 'the principal Rules'), in rule 2, in sub-rule (1), **after clause (ze)**, the following clause shall be inserted namely:—

Provided further that no such approval shall be granted by the Approval Committee in those cases which fall within the competence of the Board of Approval:

'(zf) "**Vacant Land**" means the land where there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress'.

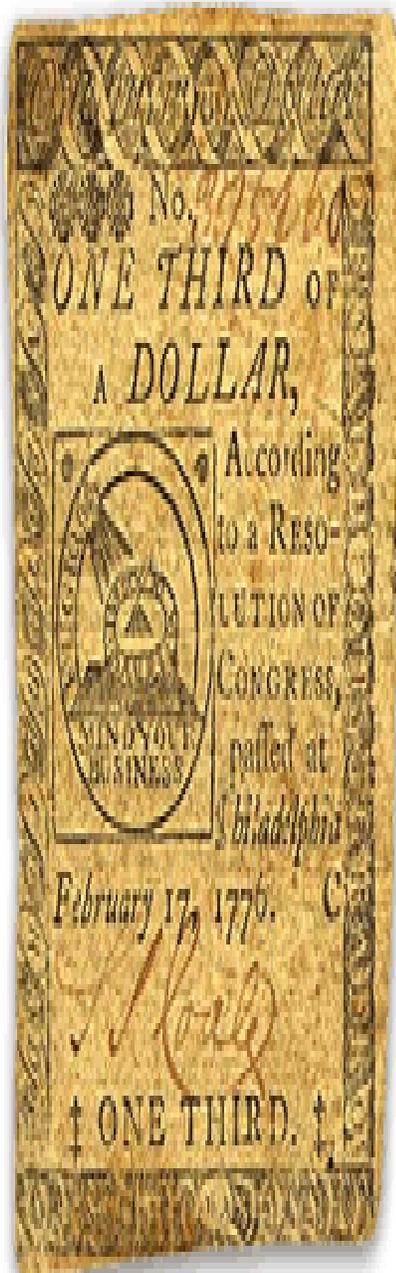
Provided also that the Approval Committee may also approve change of the entrepreneur an approved unit, if the incoming entrepreneur undertakes to take over the assets and liabilities of the existing Unit".

2. In the principal rules, in **rules 5, in sub-rule (2), in clause (a)** after the provisos, the following proviso shall be inserted, namely:—

"Provided also that the Central Government may consider on merit the clubbing of contiguous existing notified Special Economic Zones notwithstanding that the total area of resultant Special Economic Zones exceeds 5000 hectares".

3. In the principal rules, in **rule 19, in sub-rule (2)**, for the provisos, the following provisos shall be substituted, namely:—

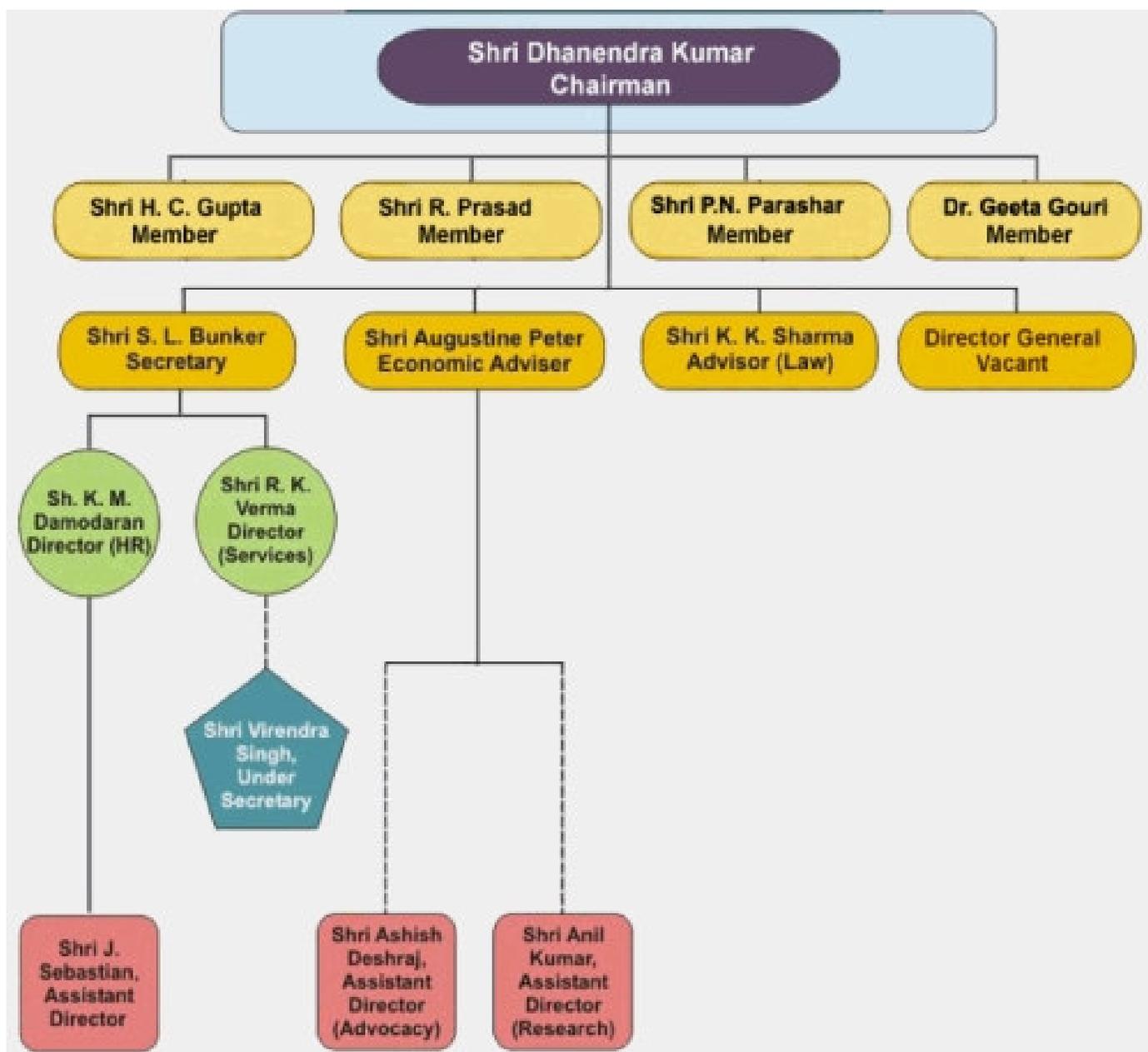
"Provided that the Approval Committee may also approve



Establishment of competition commission of india

The Central Government has appointed the Chairman and Members of the Competition Commission of India.

Present Organogram of Competition Commission of India



FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATIONS

➤ Latest Notification/ News

Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2009 - Amendment in Schedule III; substitution of item 4 and 15; insertion of item 17

In the Foreign Exchange Management (Current Account Transactions) Rules, 2000, in **Schedule III**,-

(1) (i) for **item numbers 2 and 3** and the entries relating thereto, the following item numbers and the entries shall be substituted, namely :—

"2. Release of exchange exceeding US\$ 10,000 or its equivalent in one financial year for one or more private visits to any country (except Nepal and Bhutan).

3. Gift remittance exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual;"

(ii) the amendments made to item numbers 2 and 3 shall be deemed to have come into force on the 20th December, 2006.

(2) for **item 4** and the entries relating thereto, the following item number and the entries shall be substituted, namely:—

"4. (i) Donation exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual;

(ii) Donations by corporate, exceeding one per cent of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less, for,-

(a) creation of Chairs in reputed educational institutes;

(b) to funds (not being an investment fund) promoted by educational institutes; and

(c) to a technical institution or body or association in the field of activity of the donor company.

Explanation : For the purposes of these item numbers 3 and 4, remittance of gift and donation by resident individuals are subsumed under the **Liberalised Remittance Scheme.**"

(3) for **item number 15** and the entries relating thereto, the

following item number and the entries shall be substituted, namely :—

"15. Remittances exceeding US\$ 10,000,000 per project, for any consultancy services in respect of infrastructure projects and US\$ 1,000,000 per project for other consultancy services procured from outside India.

Explanation : For the purposes of this item number '**infrastructure project**' is those related to -

- (i) Power,
- (ii) Telecommunication,
- (iii) Railways,
- (iv) Roads including bridges,
- (v) Sea port and airport,
- (vi) Industrial parks, and
- (vii) Urban infrastructure (water supply, sanitation and sewage)".

(4) **after item number 16** and the entries relating thereto, the following item number and the entries shall be inserted, namely :-

"17 Remittances exceeding five per cent of the investment brought into India or US\$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses."

(5) the amendments made to **item numbers 4, 15 and 17** shall be deemed to have come into force on the 30th April, 2007. [Notification No. G.S.R. 349(E) Dated 22-5-2009]

Press Note No. 5 (2009): Guidelines for Foreign investment in Commodity Exchanges

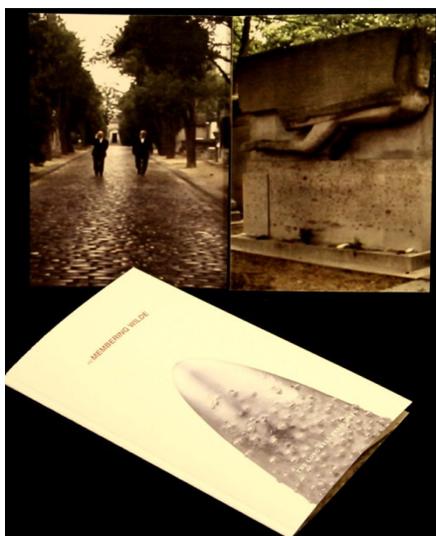
It has been decided to allow a further transition / complying/correction time to the existing Commodity exchange(s) beyond 30.6.2009 as stipulated under Press Note 2(2008) dated 12th March 2008 by extending period up to 30.9.2009.

As per Press Note 2(2008) a composite ceiling for foreign investment of 49% was allowed with prior Government approval, subject to the condition that investment under the Portfolio Investment Scheme will be limited to 23% and that under the FDI Scheme will be limited to 26%. Further, no foreign investor/entity including persons acting in concert will hold more than 5% of the equity in these companies.

All Commodity Exchanges shall furnish a compliance report informing the foreign investment in the Commodity Exchange as on 30.9.2009, along with details

of equity structure, to the Department of Industrial Policy & Promotion, Department of Consumer Affairs, Foreign Investment Promotion Board, the Forward Market Commission and SEBI.

[Issued by SIA (FC Section), Department of Industrial Policy & Promotion, Department of Industrial Policy & Promotion, Government of India vide D/o IPP F.No. 12(58)/2005-FC dated 14th May 2009]



Applicability of NBFCs- ND-SI regulations

In terms of circular DNBS (RID) C.C. No. 57/02.05.15/2005-06 dated September 6, 2005, all NBFCs with assets size of Rs 100 crore and above, and not accepting / holding public deposits were required to submit a Monthly Return on Important Financial Parameters to the

Regional Office under whose jurisdiction the company is located. It is advised that all such non-deposit taking NBFCs may comply with RBI regulations issued to NBFC-ND-SI from time to time, as and when they attain an asset size of Rs. 100 crore, irrespective of the date on which such size is attained. It is further observed that in a dynamic environment, the asset size of a company can fall below Rs 100 crore in a given month, which may be due to temporary fluctuations and not due to actual downsizing. It is clarified that in such a case the company may continue to submit the Monthly return on Important Financial Parameters to Reserve Bank of India and to comply with the extant directions as applicable to NBFC-ND-SI, till the submission of their next audited balance sheet to Reserve Bank of India and a specific dispensation is received from the Bank in this regard.

Prevention of Money- laundering (Amendment) Act, 2009 - Commencement of Act - Notified date

The Central Government hereby appoints the 1st day of June, 2009, as the date on which the provisions of the said Act shall come into force. [Notification no. S.O. 1388(E) dated 1-6-2009]



HEAD OFFICE:

Mr. U.N. Marwah, Managing Partner
4/80, Janpath
New Delhi-1100 01
(India)
Tel: +91-11-43192000
Fax: +91-11-43192021
E-mail: rnm@rnm.in

BRANCH OFFICE:

Mr. Rathna Kumar
813 Oxford Towers,
139 Airport Road,
Bangalore-560 008
E-mail: bangalore@rnm.in

AFFILIATE OFFICES:

Mumbai

Mr. Harshal Aggarwal
204, Mhatre Pen Building,
Senapati Bapat Marg, Dadar (W),
Mumbai-400 028
Tel. +91 22 24314881, +91 22 24314882
Fax. +91 22 24363312
E-mail: harshal@rnm.in

Pune

Mr. Nitin Khangaonkar
9 'B' & 'C' Wing,

Supriya Gardens, Aundh,
Pune- 411 007
Tel: +91 98230 81701
E-Mail: nitin@rnm.in

Chennai

Mr. Ashok Deora
SF 6, Golden Enclave,
184 Poonamallee High Road,
Chennai- 600 010
Tel: + 91 44 4217 8153, + 91 44 2641 5805
Fax : + 91 44 2641 5805
E-mail: ashok@rnm.in

Mauritius

Mr. Kamal Hawabhay,
365 Royal Road Rose Hill, Mauritius
Tel : + 230 4542110
Fax : + 230 4549671
E-mail: kamal@rnm.in

Hong Kong

Mr. Raymond Choi
3705 Bank of America Tower
12 Harcourt Road
Central
Hong Kong
Tel: +852 2115 9878
Fax: +852 2115 9818
E-mail: raymond@rnm.in

DISCLAIMER

R.N. Marwah & Company (hereafter referred as RNM) has taken due care and caution in compilation and presenting factually correct data contained herein above. While RNM has made every effort to ensure that the information /data being provided is accurate, RNM does not guarantee the accuracy, adequacy or completeness of any data/information in this newsletter and the same is meant for the use of the recipient and not for circulation. Readers are advised to satisfy themselves about the merits and details of each article and the information contained therein, before taking any decision. RNM does not hold themselves liable for any consequences, legal or otherwise arising out of the use of any such information/data and further states that it has no financial liability whatsoever to the recipient/readers of this newsletter. RNM nor any of its partners/employees/representatives do not accept any liability for any direct or consequential loss arising from the use of information /data contained in this newsletter or any information /data generated from this newsletter. Any dispute arising in future shall be, subject to the court(s) at Delhi.