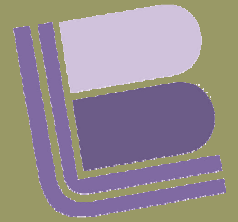


Connection



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LLB & Co.



FREEDOM
IS A WONDERFUL FEELING...
APPRECIATE IT!

What is great about entrepreneurship is that entrepreneurs create the tangible from the intangible.

~ Robert Herjauec

August 2016

**Just to Remind
You:**

- **Aug 21 - Payment of MVAT & WCT TDS**
- **Aug 30 - Payment of TDS for purchase of property for July**
- **Aug 31 - Verification of Tax Return of AY 2009-10 to 2014-15 through EVC or ITR-V**
- **Aug 31 - Payment & Monthly Return of Maharashtra PT**

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Communiqué

Dear Seniors, Friends & Colleagues

Happy Independence Day!!

By the time this newsletter will reach to you everyone must have celebrated the 70th Independence Day, one of the most important event of our history. This is the day where we remember all warriors who sacrificed their life for their next generation i.e. for us. This shows that we should work selflessly and without actually thinking a lot whether this will benefit to us or not as there are lots of things done for society welfare nothing particular to any person. This puts person and country prosperity hand by hand.

I am sure that most of us must have listened the Prime Minister's speech from Red Fort which highlighted all significant development and future projects. We as fraternity should also contribute to all possible causes which will add to country's prosperity like PM urge is to use LED instead of the bulbs which will directly reduce the energy consumption and ensure power supply to energy scarce places. We can contribute to Swachh Bharat Abhiyan by not throwing garbage anywhere. On the government concept of adopting villages we can atleast guide nearby areas and/or our native places about the importance of cleanliness. We can contribute in FDI by educating our MNC clients about India's potential and so on.

As per the Income Tax data published we can see only approx 4.5 crore individual filed income tax return for this year this shows our potential to grow, and explain the masses how crucial is to file the income tax return. As definitely this is very small percentage of our approx 125 crore population. This will help to get more digitization of data and more accurate data at government disposal to take any further action and also increase the scope of Chartered Accountants.

Inspite of sound pressure from government, RBI has maintained status quo by not reducing repo rate to control inflation. Due to better sectoral performance IIP is at positive 2.1% however CPI crossed to 6% due to food inflation but it is estimated that it will go down due to better monsoon this time in whole of India. Indian markets were also behaving very range bound but still with Bull run sentiments.

Before I conclude, Let's bow to our great nation and extend our enthusiasm and festive spirit to the Independence Day, Raksha Bandhan and Janmashtami celebrations.

Best Wishes,

CA Lalit Bajaj



“A natural person shall not be member of more than a OPC at any point of time.”



Companies (Incorporation) Third Amendment Rules, 2016

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:—

1. (1) These rules may be called the **Companies (Incorporation) Third Amendment Rules, 2016**.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3, for sub-rule (2), the following shall be substituted, namely:-

” (2) A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company”.

3. In the principal rules, in rule 8,-

(a) in sub-rule (2) for clause (ii), the following shall be substituted namely:-

“(ii) it includes the name of a trade mark registered or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and the rules framed thereunder unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been ob-

tained and produced by the promoters;”

(b) in sub-rule (6), in clause(n), the comma between the words ‘financial’ and ‘corporation’ shall be omitted.

4. In the principal rules, in rule 13, after sub-rule (2), the following Explanation shall be inserted, namely:-

“Explanation.- For the purposes of sub-rule (1) and sub-rule (2), the type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written by the subscriber and witness respectively so long as the subscriber and the witness as the case may be appends his or her signature or thumb impression, as the case may be.”

5. In the principal rules, in rule 16,-

(i) in sub-rule (1),-

(a) in clause (m), the following Explanation shall be inserted, namely:-

“Explanation.- In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached.”;

(b) clause (q) shall be omitted;

(ii) in sub-rule (2) in clause (g), the words ” or partnership firm” shall be omitted.

6. In the principal rules, for rule 26, the following rule shall be substituted, namely:-

“**26. Publication of name by company.**- (1) Every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website.

(2) The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.”.

7. In the principal rules, in rule 28, in sub-rule (2), after the second proviso, the following proviso shall be inserted, namely:-

“*Provided also that on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.*”.

8. In the principal rules, in rule 29, for sub-rule (1), the following shall be substituted, namely:-

“(1) The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or

repay matured deposits or debentures or interest thereon:

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.”

9. In the principal rules, in rule 30,-(A) in sub-rule (1), after clause (i), the following shall be inserted namely:-

“(j) a copy of the No Objection Certificate from the Reserve Bank of India where the applicant is a registered Non-Banking Financial Company”

(B) in sub-rule (6), in clause (c) the words “and to the Securities and Exchange Board in the case of listed companies” shall be omitted;

(C) in sub-rule (10), after the proviso, the following Explanation shall be inserted, namely:-

“Explanation.- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.”.

10. In the principal rules, after rule 36, the following rule shall be inserted, namely:-

“37. Conversion of unlimited liability company into a limited liability company by shares or guarantee.- (1) Without prejudice to any other provision in the Companies Act, for effecting the conversion of an unlimited liability company with or without

share capital into limited liability company by shares or guarantee, such a company shall pass a special resolution in a general meeting and thereafter, an application shall be filed in Form No. INC-27 in the manner provided in sub-rules (2) and (3).

(2) The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debentures holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.

(3) The Company shall within forty five days of passing of the special resolution file an application as prescribed in sub rule (1) for its conversion into a company limited by shares or guar-

antee alongwith the fees as provided in the Companies (Registration offices and Fees) Rules, 2014, by attaching the following documents, namely:-

- a. notice of the general meeting along with explanatory statement;
- b. copy of the resolution passed in the general meeting;
- c. copy of the newspaper publication;
- d. a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorised in this behalf or Company Secretary of the Company, if any.
- e. declaration signed by not less than two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).
- f. a complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:-
 - (i) the names and address of every creditor and debenture holder of the Company;
 - (ii) the nature and respective amounts due to them in respect of debts, claims or liabilities;
 - (iii) declaration by a Director of





the Company that notice as required under sub-rule (2) has been dispatched to all the creditors and debenture holders with proof of dispatch.

g. a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.

h. a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, where there is one to the effect that the Board of Directors of the Company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.

i. The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause (h) above.

j. No Objection Certificate from sectoral regulator, if applicable.

k. No Objection Certificate from all secured creditors, if any.

(4) Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.

(5)The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.

(6) The certificate of incorporation consequent to conversion of unlimited liability company to into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.

(7) Conditions to be complied with, subsequent to conversion.-

(1) Company shall not change its name for a period of one year from the date of such conversion.

(2) The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.

Explanation: For the purpose of this clause, past debts, liabilities, obligations or contracts does not include secured debts due to banks and financial institutions.

(8) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-

(a) its networth is negative, or

(b)an application is pending under the provisions of the Companies Act 1956 or the Companies Act, 2013 for striking off its name, or

(c) the company is in default of any of its Annual Returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or

(d) a petition for winding up is pending against the company, or

(e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or

(f) an inquiry, inspection or investigation is pending against the company.

(9) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects

Companies (Accounts) Amendment Rules, 2016

In exercise of the powers conferred by sub-sections (1) and (3) of section 128, sub section (3) of section 129, section 133, section 134 and section 138 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:-

1. (1) These rules may be called the **Companies (Accounts) Amendment Rules, 2016**.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Accounts) Rules, 2014, (hereinafter referred to as principal rules), in rule 6, for the second proviso, the following proviso shall be substituted namely:-

“Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;

(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.”

3. In rule 8 of the principal rules, in sub-rule (1), for the words “and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture com-

panies included in the consolidated financial statement is presented”, the words “and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report” shall be substituted.

4. In rule 13 of the principal rules, in sub-rule (1),- (a) in the opening portion, the words “or a firm of internal auditors”, the words “which may be either an individual or a partnership firm or a body corporate” shall be substituted;

(b) In the Explanation, for item (ii), the following item shall be substituted, namely:

‘(ii) the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not’.



Clarification on attaining Age of 60 /80 years for Income Tax

Higher tax exemption limits have been prescribed under the past Finance Acts for resident senior citizen taxpayers who have attained the age of sixty years. Even in such cases, the exemption limit is still higher for very senior citizens who have attained the age of eighty years. A doubt has been raised about

the attainment of the aforesaid qualifying ages for availing higher exemption in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have com-

pleted a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

2. The matter has been examined. Although specific provision does not exist in this regard under the Income-tax Act, 1961, the Hon'ble Supreme Court had





an occasion to consider a similar issue in the case of Prabhu Dayal Sesma vs. State of Rajasthan &, another 1986, AIR, 1948 wherein it has dealt with on the general rules to be followed for calculating the age of the person. In this judgment, Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the preceding, the anniversary of his birthday. The observation of Hon'ble Supreme Court in para 9 of the aforesaid judgment reads as under:

"9..... At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary

of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time is years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday"

3. In view of the aforesaid judgment, the Central Board of Direct Taxes, in exercise of powers under section 119 of the Act, hereby clarifies that a person born on 1st April would be considered to have attained a par-

ticular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would therefore be decided on the basis of above criteria.

4. The field authorities are directed to take note of above position for ascertaining the age while computing tax liability of a taxpayer falling in 'Individual' category, being resident in India.

Attachment of property without any opportunity / SCN not valid

Instructions regarding provisional attachment of property under Section 73C of the Finance Act, 1994.

Attention is drawn to Section 73C of the Finance Act, 1994, the Service Tax (Provisional Attachment of Property) Rules, 2008 and Circular No. 103/06/2008-Service Tax dated 1.7.2008 on the above subject.

2. Recently, in a case of an as-

sessee whose bank accounts were ordered to be attached without giving any opportunity to them, the Hon'ble Allahabad High Court after a detailed analysis of the legal provisions, observed, inter- alia, that the order directing attachment of the property without waiting for a reply to the show cause notice, and without giving any opportunity and without giving any notice, was in gross violation of Rule 3 of the Rules of

2008 read with paragraph 2 (iii) of the Circular dated 1st July, 2008. It was mandatory for the authority to issue a notice giving 15 days time to reply before attaching a property. The Hon'ble High Court further observed that since proceedings under Section 73 of the Act had been initiated and a show cause notice had already been issued to the petitioner, action for attachment could only have been initiated by the Commis-



sioner and should not have been initiated by the Deputy Commissioner. The Court also directed that a certified copy of the order be sent to the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance with specific instructions to issue a circular to all officers ensuring that the powers under Rule 3 should be exercised with utmost care and caution and should not be exercised frivolously.

3. It may be noted that, on this issue, there are adequate safeguards in the law and same have been highlighted in the Circular dated 1.7.2008. The present situation has resulted only on account of non-compliance with respect to both. Chief Commissioners are requested to issue standing orders with respect to the observations of the Hon'ble Allahabad High Court and to also emphasize that non-compliance

with legal provisions or administrative instructions will leave officers with no defence in legal proceedings arising out of such non-compliance.



Principle of unjust enrichment in case of refund- Draft Circular

Attention is invited to the provisions contained in Section 11B of the Central Excise Act, 1944 (CEA) which provides for grant of refund of duty of excise and interest, if any, paid on such duty. Further the incidence of duty or interest is deemed to be passed on to the buyer of goods by the person paying it in terms of Section 12B of the CEA. The provisions of Section 11B and 12B of CEA have been made applicable to service tax matters also in terms of the provisions contained in Section 83 of the Chapter V of the Finance Act, 1994. Similar provisions are also there in the Customs Act, 1962 in sections 27, 28C and 28D. The succeeding paragraphs of this circular will refer to the relevant sections in the Central Excise Act, 1944. The contents of these paragraphs will apply, mutatis mutandis, to refunds of service tax and customs duty.

2.1 In view of the provisions contained in clause (a), (b) or (c)

of sub-section (2) of Section 11B of the CEA, it is provided that the principle of unjust enrichment is not applicable in following cases:

2.1.1 duty paid on exports;

2.1.2 duty paid on inputs / input services used in the manufacture of exported goods / for provision of exported services;

2.1.3 unspent balance lying in PLA.

2.2 In other words, it would be presumed that in all other cases the incidence of duty has been passed on by the person who has paid the duty. If duty is found not payable otherwise but the incidence has been passed on to some other person then excess amount of duty or interest is liable to be credited to Consumer Welfare Fund established under Section 12C of the CEA. This presumption however is a rebuttable presumption as the incidence of indirect taxes on goods and services is ex-

pected to be borne by the ultimate consumer only.

3.1 It has been observed that there has been a lot of litigation on this account. Further, varied practices are being followed by the field formations to satisfy that the principle of unjust enrichment is not applicable in various refund scenarios. In order to bring uniformity in the application of the principle of unjust enrichment, this circular will indicate the accounting and documentation requirements which are to be adhered to, in the various refund scenarios which are likely to be encountered.

3.2 The accounting requirements which are common to all the situations covered in this circular are essentially two:

3.2.1 Balance Sheet of the applicant for the financial year in which the duty amount claimed as refund has been paid or credit note has been issued,





should indicate the refund amount as “Duty Receivable” under the heading “Current Assets”. (It does not matter whether the differential duty/tax amount is reflected in the “Duty Receivable” account, invoice wise or a consolidated journal entry is passed at the end of the financial year. The consolidated entry, however, must reflect the invoices in respect of which the differential amount is being transferred to “Duty Receivable” Account.)

3.2.2 Balance Sheet of the subsequent financial year(s) after the financial year in which duty/tax was reflected as “duty receivable” till the financial year preceding the financial year in which refund is proposed to be sanctioned, should continue to show the amount as “Duty Receivable” under the heading “Current Assets”.

3.2.3 Further details with respect to the recording of transactions in the books of account, will be indicated in succeeding paragraphs, wherever required.

3.3 The certificates indicated as part of the documentary requirements would be self-certified by the applicants in all cases where the duty amount being claimed as refund amount is Rs. 25 lakhs or less. In cases, however, where the duty amount being claimed as refund is more than Rs. 25 lakhs, the certificates would be required to be certified by a Chartered Accountant / Cost & Management Accountant. A suggested format of each such certificate is enclosed as **Annex-**

ures – A, B and C, annexed to this circular.

4.0 REFUND ARISING OUT OF DIFFERENTIAL DUTY ON INPUTS AND CAPITAL GOODS.

4.1 The judgement of Hon’ble Supreme Court in the case of **Union of India Vs. Solar Pesticides Pvt. Ltd**, reported in **2000 (11) ELT 401 SC** states that the principle of “unjust enrichment” is required to be satisfied even in case of refund of duty / tax on inputs / input services that are used in the taxable activity as the test is whether the incidence of the duty / tax has been passed on or not and not whether the actual duty / tax has been passed on or not. The refund of duty / tax paid by the recipient to the manufacturer / service provider at the time of receipt of inputs / input services may arise in cases where it transpires subsequently that the duty / tax was not payable by the manufacturer / service provider. The manufacturer / service provider may not be able to claim refund of such amount if he has already recovered the duty / tax from the recipient of inputs / input services and it is the recipient who may seek refund of duty / tax already paid by him to the manufacturer / service provider. In such a scenario, the refund sanctioning authority has to satisfy himself that the amount of duty / tax claimed as refund has neither been included in the cost nor the CENVAT CREDIT thereof has been claimed by the recipient. In other words, at the time of purchase, the purchase account would be debited with

the value exclusive of duty. The recipient may transfer duty component to Input Tax Credit account if he desires to avail CENVAT CREDIT. Thereafter on submission of refund application, the Input Tax Credit account would be reversed by an amount equal to the refund amount, if he has availed CENVAT CREDIT and the said amount would be credited to “Duty Receivable” account.

4.2 The accounting requirements as indicated in paragraph 3.2 will suffice. As mentioned therein, the differential duty should be reflected as “duty receivable” in the Balance Sheet. This is because of the fact that in such situations the applicant seeking refund will only come to know that he is eligible for refund once the supplier has failed to get the refund. There would be very rare cases in which the applicant is well aware of the refund eligibility at the time of purchase of inputs/capital goods. The duty should be recorded as “Duty Receivable” invoice wise for each purchase otherwise it would create complications as the recording of the purchase value inclusive of duty would mean that the said duty has become part of cost and, therefore, indirectly the incidence of duty has been passed on. Alternatively, the applicant may credit the purchase account at the end of the year with the amount of duty proposed to be claimed as refund and debit the same in the “Duty Receivable” account.

4.3 The documentary require-



ments are as follows:

4.3.1 Documents evidencing payment of duty by the manufacturer / service provider

4.3.2 **Annexure- A** for the applicant's certification that CENVAT Credit was either not availed or if availed earlier has been reversed and that the duty paid has not been included in the cost;

4.3.3 **Annexure-C** for the supplier's certification that either he has not filed any refund application for the duty amount being claimed as refund or the refund application filed by him has been rejected on the ground of "unjust enrichment".

4.4 In the case of refund of duty relating to capital goods, in addition to the requirements indicated in paragraphs 4.1 to 4.3 above, the issue relating to depreciation will also require examination. The amount of duty paid on capital goods should not be availed as CENVAT Credit. Further in terms of sub-rule (4) of rule 4 of the CENVAT Credit Rules, 2004, the amount of duty paid on capital goods should not be claimed as depreciation under the provisions of Income Tax Act, 1961. In other words, the amount of duty should not be capitalised, i.e. only the ex-duty value of capital goods should be capitalised. The amount of duty on capital goods has to be transferred to "Duty Receivable" account. Submission of **Annexure-A** will take care of this aspect.

4.5 A common point with re-

spect to inputs, input services and capital goods is that the applicant might have availed the CENVAT CREDIT in the financial year in which the duty/tax amount was paid at the time of receipt of the inputs/input services/ capital goods. Therefore as per the accounting principles the purchases would have been expensed out in the profit & loss account of the same financial year and it would be assumed that the incidence of duty has been passed on. But in such scenarios if the recipient reverses the CENVAT CREDIT in the financial year in which he claims the duty/tax amount as refund, this will satisfy the test of the principle of "unjust enrichment". This is based on an application of the Supreme Court judgement in the case of Chandrapur Magnet-Wires vs Collector of Central Excise reported in **1996 (81) ELT 3 SC**.

5.0 REFUND ARISING OUT OF DIFFERENTIAL DUTY ON FINAL PRODUCTS IN SOME SITUATIONS

5.1 Discounts

5.1.1 Certain type of discounts (year ending discounts / quantity discounts, etc.) are known at the time of removal of goods / provision of service but can be quantified only after removal of goods/ provision of services, normally at the year end and the accounts are settled accordingly. Invoices are issued for full value and duty / tax is paid on the same accordingly. It is only at the end of the financial year that the amount of discount/

incentives is adjusted according to the terms of contract. Normally, such transactions are settled through the mechanism of credit/ debit note whereby the supplier credits the account of the buyer in his books of account with the amount of discount/incentives given while the purchaser debits the account of supplier in his books of accounts with the amount of discount/ incentives received.

5.1.2 The accounting requirements as indicated in paragraph 3.2 will suffice.

5.1.3 The documentary requirements are as follows:

- Document evidencing payment of duty by the applicant;
- Contract, wherein terms of the contract should clearly specify the terms of discount/ incentive.

Note: Date of such contract should be on or before the date of first removal;

- Certificate for calculation of discount on the base quantity supplied; Certificate from the recipient that he has reduced his CENVAT CREDIT on account of differential amount; (**Annexure -B**)

- Details of Credit/ Debit note issued clearly indicating the differential duty amount; (Annexure- D)

5.2 Finalisation of provisional assessment

5.2.1 The assessee may be eligible for refund on finalisation





of provisional assessment under the provisions of Rule 7 of the Central Excise Rules 2002.

5.2.2 The accounting requirements as indicated in paragraph 3.2 will suffice.

5.2.3 The documentary requirements are as follows:

- Document evidencing payment of duty by the applicant;

- Certificate that the differential duty amount has not been recovered from the recipient; (**Annexure-A**)

- Certificate from the recipient that he has not availed CENVAT CREDIT of differential duty amount; (**Annexure-B**)

- Details of Credit/ Debit note issued clearly indicating the differential duty amount; (**Annexure-D**)

5.3 Favourable order by the Appellate Authority

5.3.1 There may be instances where the tax liability as determined by the department is contested by the assessee (tax liability so determined being higher than the tax liability as self-assessed) but duty was paid at higher rate in accordance

with such determination. The assessee may issue invoices for future transactions, if issue is recurring, in such a way that departmental assessment is followed and thus recovers higher amount from its customers; or he may continue to bear the extra burden himself and continue to issue invoices as before. If the contentious issue was one-off or has no impact on future transactions, the taxpayer may pay duty himself without recovering from his customers or he may issue supplementary invoices. The refund may arise once the assessee receives a favourable order from the Appellate Authority.

5.3.2 The accounting requirements as indicated in paragraph 3.2 will suffice.

5.3.3 The documentary requirements are the same as indicated for finalisation of provisional assessment in paragraph 5.2 above. The certificates regarding non recovery of the differential duty amount as shown in the invoices and non availment of Cenvat credit will be necessary only if the invoice / supplementary invoices reflects the differential duty amount.

6.0 REFUND OF PRE DEPOSIT

6.1 Section 35F of the CEA provides for the pre-deposit of a certain amount of duty before the filing of an appeal before the appellate authority by the assessee. In the eventuality of an order or judgement in favour of the assessee, he becomes eligible for refund of pre-deposit. In terms of Circular No. 984/08/2014-CX dated 16th September, 2014 issued from F. No. 390/Budget/1/2012-JC, the said amount is required to be refunded under the provisions of Section 35FF of the CEA and that the said amount is not a duty. It is accordingly clarified that the provisions of Section 11B of CEA are not applicable in case of refund of pre-deposit amount and, therefore, the principle of unjust enrichment is not applicable in such cases.



Request for BLOOD

Son of CA Jagdish Banka is suffering from Thalassaemia Major, which is a generic blood disorder. He requires blood transfusion every 10 days in Mumbai.

Blood Group Required: "A" Positive, "A" Negative, "O" Positive, "O" Negative

Contact CA Jagdish Banka +91-9867353742 | E-mail: jagbanka@gmail.com





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ICAI Group for appointment of Statutory/Internal Auditors



The Management Committee, at its 12th (Adjourned) meeting held on 7th August, 2016, while considering Item No.27, 'Appointment/Reappointment of Statutory Auditors/Internal Auditors of various units of ICAI for the year 2016-17 and fixation of their remuneration' has constituted a Group for (i) looking into the appointments/reappointments of statutory/internal auditors of various

units of ICAI for the year 2016-17 suggested by the Audit Committee; and (ii) suggesting the criteria to be followed for such appointments in future to the Management Committee. The Group comprises of the following members:-

- CA. Sripriya Kumar
- CA. Prakash Sharma

CA. Sonali Das Halder, Deputy Secretary will act as Secretary to the said group.

- CA. Prafulla P. Chhajed, Convenor
- CA. M.P. Vijay Kumar

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