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EDITORIAL

AUDIT - ONLY BY AUDITORS

Convener National Economic Forum, Former Chairman BoS and Member Central Council Institute of Chartered Accountants of India

The Delhi high court, in a leading judgement delivered on 3rd June, 2016, has declared service tax audit being conducted by Central Excise and Service tax department as ultra virus, in the matter of Mega Cabs Vs UOI. The matter was argued by Mr. J.K. Mittal, FCA as advocate of the petitioner.

The court held that audit is a specialised function and cannot be delegated to service tax department or Excise department. It has been a general practice of the service tax department to conduct Audit of Service tax assesses for the last 5 years by deputing own officers of the rank of inspectors and Superintendents. Service tax department also seeks voluminous details and seek information in self- specified formats/ annexures. Now this judgement made it clear that the officers of the department have no power to conduct Audit at all. The honourable High Court has also held that the CAG officers have no power to conduct audit of assessee's records.

In our humble submission, audit is a specialised function and the profession of Chartered accountants is rightly trained and experienced for audit. Tax Audit under section 44AB of the Income Tax Act, has immensely benefitted Govt. of India, trade and industry. Tax Audit has brought in financial discipline and has reduced the need for detailed scrutiny and significantly improved voluntary compliances. Also under Sec. 142(2A) of the Income Tax Act, whenever specialized, complex or magnanimous issues are required to be examined in the interest of revenue, the Income Tax Department relies upon the services of the "accountant" (read "chartered accountant as per sec. 288). This is being done for almost 40 years now.

CBEC may kindly consider that detailed scope, coverage and reporting requirements can be brought in for Auditors appointed by assessee, to ensure deeper compliance and reporting. The purpose of the department will be adequately served and excise-service tax assesses will also get professional guidance and support.

EASE OF DOING BUSINESS
India need to move fast forward

The Modi Government is committed to significantly improve the working environment for businesses to foster growth, employment, eradication of poverty paving way for significant improvement in education; health and housing for all Indians by bringing ease of doing business.

The initiatives taken by the Government have already created a positive atmosphere and mindset. The nation is committed for Make in India and to aggressively implement growth strategy for India. A big push in the direction of removing regulatory and bureaucratic hurdles including approvals, inspections, filing, licenses, reviews, returns, detailed compliances and procedures is very necessary.

The government action on withdrawal of old unrequired legislations need to be supplemented by rationalisation of all legislations, which are impacting growth of business significantly. Government has made several approvals faster and easy besides introducing electronic governance systems. However, all major hurdles in growth are still hovering on the head of trade, business and commerce. To take few examples:

- **Company Law-** full of compliances, forms, filings, restrictions, limitations, procedures and regulatory requirements even for small company, One person Company or private companies. Most of the restrictions are unnecessary for better efficient and effective corporate Governance.
- **SEBI** has introduced so many Regulations, disclosures, Codes and advisories which are not in the interest of sustained growth of capital market. There are

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LATEST IN FINANCE

1.0 Government issues draft guidelines for onshore wind projects

The Union Ministry of New and Renewable Energy (MNRE) has come out with draft guidelines for the development of onshore wind power projects, aimed at accelerating the growth of wind power sector in the context of new technology and emerging regulations.

2.0 Government announces new IPR regime

The government unveiled the national Intellectual Property Rights (IPR) policy to create a larger institutional framework to strengthen the IPR regime. It also suggests tax incentives to boost R&D and the creation of a loan guarantee scheme to encourage start-ups and cover the risk of genuine failures in commercialisation based on IPRs as mortgageable assets.

3.0 Five-yr plans out, 15-yr vision soon

The NDA government at the Centre, led by Prime Minister Narendra Modi, has decided to get rid of the Nehruvian five-year plans, and replace them with 15-year vision documents. The NITI Aayog has been directed to prepare a vision document at the earliest. The current 12th Five-Year Plan will be terminated in the current financial year, 2016-17.

4.0 US issues rule for banks to identify shell firm owners

The Obama administration is issuing a long delayed rule requiring the financial industry to identify the real owners of the companies and proposing a bill that would require companies to report the identities of their owners to the federal govt. The CDD rule will require banks, brokers, mutual funds and other financial institutions to collect and verify the identities of the real people, or "beneficial owners," who own and control companies when the companies open accounts.

5.0 Drug Regulator maps out new site inspection norms for safer medicines

The Central Drug Standard Control Organisation (CDSCO) is drawing up a new inspection model for pharmaceutical manufacturing sites that will help identify compliance issues and products that can be potentially harmful. The move follows concerns raised by foreign drug regulators over quality of medicines produced in India.

6.0 FM introduces Bill to fast track recovery of bad loans

In a move to expedite the process of resolving the debt issues burdening the creditors including banks and financial institutions, Finance Minister introduced the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Bill, 2016.

Key Provisions:-

- R.B.I to regulate asset reconstruction companies.
- Priority to secured creditors in repayment of debt.
- Stamp duty exemption on loans taken over by ARCs from banks, FIs.
- Central registry of property rights.
- Online filing and uploading of rulings by DRTs.
- Automatic transfer of assets by defendant by the DRT.
- Period of filing appeals cut down to 30 days.

7.0 Government sets up e-marketplace

The government has set up an an online Government e-Marketplace (GeM) for common use goods and services. It can be used by government buyers for direct online purchases. Purchases up to Rs. 50,000 can be made through any available supplier on the GeM. For purchases exceeding this limit, the supplier having lowest price amongst the available suppliers and meeting the requisite quality, specification and delivery period will have to be selected.

8.0 FPI investments in unlisted debt securities

The Reserve Bank of India (RBI) placed a draft circular on its website in regard to foreign portfolio investments in unlisted corporate debt securities and securities debt instruments. According to the draft, FPIs can invest in any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of assets where banks, FIs or NBFCs are originators. FPIs can also invest in any certificate or instrument issued and listed in terms of the SEBI regulations on public offer.

EDITORIAL

EASE OF DOING BUSINESS............

inadequate initiatives to channelize risk capital to businesses. Investors' confidence is still very low. SEBI's disclosure based systems have failed to bring real monitoring on diversion of funds, manipulations of markets, poor corporate governance and have resulted in withdrawal of faith of general investor in the capital market. The midsize or even large size company (barring few very exceptionally top companies) are not inclined to raise resources as a public limited listed company due to serious concern on hurdles, cost of issue, compliances and prosecutions even on technical matters.

- **VAT -** With no reliance on businesses, the entire purchase and sales transactions (100%) need to be reported and filed. All inter- state movements of goods are also mandated for advance individual filings. Even small and mid-size traders need very detailed compliances.
- **Taxation -** Inspite of deep doze of simplification recently, the transfer pricing, ICDS, TDS, scrutiny, survey, raids, GAAR, POEM, MAT, internationally highest rate of taxes (including dividend tax), corruption are all major challenges,
- **Industrial Laws -** the age old labour laws having over doze of minimum wages but hardly protect the welfare of labour. The MNC companies in India are exploiting even white collar employees with no observation of timings, hire and fire. The contract labour is no body's baby. Provident fund law need to be rational and ESI is not meeting any proper objective.
- **Real Estate -** the sector is full of licenses, CLUs, approvals, clearances, massive corruption in regulatory department. The incompleted projects are waiting for government support to ensure delivery and meet housing needs. The sector need low cost funds in addition to strict monitoring on diversion and misuse of funds.

We can keep on writing, but the list is endless. The government is very active at political levels. However the mind-set and approach of the bureaucratic administration and those who are at different levels of government is still full of controls, apprehensions and procedures. The judiciary at lower and middle order, need significant beefing up.

All Indians need to actively support our Bharat Mata with commitment, positive mind set and pragmatic approach for coming out of the hurdles.

9.0 What is Net Neutrality?

It essentially means that all internet service providers must treat internet traffic equally. All points of the network should be able to seamlessly connect to all other points, without any discrimination on the basis of speed, access or price.

CAPITAL MARKET

1.0 Markets Regulator tightens P-note norms

The SEBI has tightened norms for the participatory notes as part of its efforts to curb money laundering through this route. The SEBI board approved the proposal to increase disclosure requirements for issuance of P-notes, which would enable the regulator to know the beneficial owners of these instruments at any point of time.

2.0 SEBI working on mechanism to allow firms to issue securities faster

Market regulator Securities and Exchange Board of India (SEBI) is close to forming up a new mechanism that would allow listed companies to issue newer securities faster. Once this facility of 'Annual Information Memorandum' is put in place, corporates won't need to end up filing prospectus every time they issue securities. It would help companies do further fund raising without taking merchant bankers' assistance.

3.0 SEBI bars MFs from restricting redemptions

Mutual funds cannot restrain investors from redeeming their investments except in extreme circumstances, such as a market-wide liquidity crunch, exchange closures, market failures or unpredictable operational problems. These regulations will apply immediately to all new schemes and from July 1 to all existing schemes.

4.0 SEBI to tighten disclosure rules for credit rating agencies

To safeguard investors' interest, capital markets regulator Securities and Exchange Board of India (SEBI) might soon ask Credit Rating Agencies

(CRAs) to make greater disclosure about suspension and subsequent withdrawal of ratings, and periodic review of the criteria used for ratings. Rating agencies should be made more responsible and accountable. The regulator might mandate CRAs to make public the criteria used for rating and it should be reflected in their press releases.

5.0 Firms with wilful defaulter on board cannot raise funds

Capital market regulator SEBI has made it harder for companies with a wilful defaulter on their boards to raise funds from the securities market, either as debt or equity. Effectively, companies will now be forced to show such directors the door if they wish to access the securities markets.

6.0 SEBI special court to come up in national capital

To fast track proceedings and ensure timely disposal of cases filed by capital market regulator SEBI , a special court is in the process of being set up in the national capital.

7.0 NSE online mutual funds

Mutual fund service system is an online collection system from NSE for its eligible members for placing subscription on redemption orders.

8.0 SEBI issues norms for InvITs listing

Capital market regulator Securities and Exchange Board of India (SEBI) issued listing guidelines for infrastructure investment trusts (InvITs). According to SEBI guidelines, public issue of InvITs will require institutional investors participation of 75 per cent, while the remaining 25 per cent can be from other investors. Besides, just like an initial public offering (IPO), InvIT may allocate up to 60 per cent of the portion available for allocation to Institutional Investors to anchor investors.

BANKING

1.0 Bank chiefs will not be questioned over NPA resolution decisions

Banks Board Bureau (BBB) Chairman has said that the Board will put in place a new "Intermediate Mechanism" that will provide cover to bank chiefs on their bad-loan resolution decisions.

The bankers, who are currently wary of accepting one-time settlements from promoters due to the Indian system's venerable 3Cs (CBI, CVC, and CAG, who can question their decisions even a few years later), will be protected by this 'intermediate mechanism'.

The intermediate mechanism to be put in place will only focus on the 'processes' undertaken in resolving NPAs and not the pricing decisions involved.

2.0 RBI Proposal - Framework to mitigate risk of lending

- Incremental exposure of the banking system to a borrower beyond permissible lending limit will be deemed to carry higher risk
- Plans to put in place prudential risk recognition measures
- 3% standard asset provision on the banking system's incremental exposure
- Additional risk weight of 75% over and above the applicable risk weight for exposure to borrower
- Banks may subscribe to bonds issued by borrowers (over and above the permissible lending limit) in the first year of the framework
- RBI to allow banks specific exemptions to charge differentiated interest rate to specified borrowers

3.0 RBI tweaks guidelines on ownership in private banks

The Reserve Bank of India has released an elaborate matrix of shareholding limits in private sector banks in view of the need for additional capital after implementing Basel III regulations and to rationalise ownership limits.

CORPORATE LAWS

1.0 Rajya Sabha passes Bankruptcy Code

The Parliament has passed the Insolvency and Bankruptcy Code Bill, enabling a single law to deal with distressed companies, their promoters, creditors, employees and other stakeholders for the first time in India.

Key notes

- Law allows early identification of financial distress to help revive a company

- 75% of creditors have to agree on a revival plan
- Individuals to be given a chance of 'Fresh Start', where outstanding debt will be written off
- Allows for insolvency regulator; says regulatory powers with govt till such body is set up
- Specifies penalties for offences committed under corporate insolvency
- Penalty will be imprisonment up to five years, or a fine up to Rs 1 crore, or both.
- Debt Recovery Tribunal mooted as adjudicating authority for individuals/ unlimited liability entities
- National Company Law Tribunal to be adjudicating authority for companies/ limited liability entities

Under the new code, employees and workmen will have first right during liquidation of assets under the law followed by secured creditors.

2.0 8 'Special Courts' to hear serious corporate cases

The Ministry of Corporate Affairs has designated eight courts in different states and union territories as "special courts" for speedy trials of serious corporate offences.

3.0 Centre speeds up patent examination for start-ups, India first filers

The Centre has introduced a facility for speeding up the examination of patents for start-ups and for applicants who choose India as the competent authority for international searching or preliminary examination.

The government has also decided to bring down the time required for grant of patents for all applicants to two-and-a-half years from five-seven years required at present.

4.0 Cheque-bounce case outside winding-up

The Bombay High Court has ruled that a company and its directors can be prosecuted for issuing a cheque which gets dishonoured by a bank even if the company is facing winding up proceedings under the Companies Act 1956. It is not necessary to get the assent of the company judge to prosecute the accused persons under Section 138 of the Negotiable Instruments Act which deals with bounced cheques as a criminal offence.

DIRECT TAXATION

1.0 Direct tax dispute resolution scheme kicks off from 1st June

To give an opportunity to the past cases, which are ongoing under the retrospective amendment, the finance minister proposed 'one time' scheme of dispute resolution for them in which subject to their agreeing to withdraw any pending case in any court or tribunal or any proceeding for arbitration, mediation, etc under BIPA, they can settle the case by paying only the tax arrears in which case liability of the interest and penalty shall be waived. This scheme shall come into force on June 1 and declarations under the scheme may be made on or before December 31.

2.0 Extension of time limit for E-filling of appeals

It has been decided to extend the time limit for filing of e-appeals as referred to in Rule 45 of the Income Tax Rules, 1962 in respect of persons who are required to furnish return of income electronically. E-appeals which were due to be filed by 15.05.2016 can be filed up to 15.06.2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

CBDT Circular No. 20/2016

3.0 CBDT notifies panel for Rule 10VA applications

The CBDT notified a committee headed by chief commissioner of income tax (international taxation), West Zone, Mumbai, for examing applications made under Rule 10VA. This rule comes under Section 9A of the Income Tax Act that provides special regime in respect of offshore funds having fund managers located in India. This has been implemented since April 1.

4.0 E-Verification of old tax-returns

In case of returns for Assessment Years 2009-10, 2010-11, 2011-12, 2012-2013, 2013-2014 and 2014-2015 which were uploaded electronically by the taxpayer within the time allowed under section 139 of the Act and which have remained incomplete due to non-submission of ITR-V Form for verification, hereby permits verification of such returns also through EVC. Such verification process must be completed by 31.08.2016.

CBDT Circular No. 13/2016

5.0 Mauritius investors to be taxed from April 2017

The government has gained the right to tax capital gains arising in Mauritius from sale of shares acquired on or after April 1, 2017, in Indian companies.

- Capital gains arising in Mauritius from sale of shares acquired on or after April 1, 2017, in Indian firms to be taxed.
- During transition period of two years, tax will be limited to half the Indian rate. Full rate to kick in from 2019-20.

6.0 Draft tax rule for avoiding Vodafone-type cases

Budget 2015-16 says indirect transfer overseas would be taxable in India if Indian assets are more than Rs 10 crore and represent at least 50% of the value of all global assets owned by the company concerned. The much-criticised retrospective amendment to the Income Tax Act had made these transfers taxable in India if transfer derives substantial value from Indian assets. CBDT comes out with rules to measure fair market value of shares and assets. Provisions made in the Finance Act, 2015, are prospective.

AUDIT / ACCOUNTANCY

1.0 Listed cos to disclose audit qualification impact separately

Now, listed entities will be required to disclose the cumulative impact of all audit qualifications on relevant financial items in a separate form called 'Statement on Impact of Audit Qualifications' instead of the present form. Such disclosures will have to be made in a tabular form, along with annual audited financial results filed in terms of listing regulations. The new mechanism will be applicable from April 2016. Besides, the management of a company would be required to explain its view about qualifications.

2.0 New / Revised Standards announced on Auditing by ICAI

- Revised SA 700, Forming an Opinion and Reporting on Financial Statements.
- New SA 701, Communicating Key Audit Matters in the Independent Auditor's Report.
- Revised SA 705, Modifications to the Opinion in the Independent Auditor's Report.
- Revised SA 706, Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report.
- Revised SA 260, Communication with Those Charged with Governance.
- Revised SA 570, Going Concern.

INDIRECT TAXATION

1.0 Service received from foreign underwriters was taxable under reverse charge

The CESTAT, Chennai Bench held that where Adjudicating Authority demanded service tax from assessee under reverse charge mechanism alleging that it availed services of underwriter outside India for purpose of underwriting of firm as well as optional American Depository Shares and commission paid to underwriter was taxable under underwriting services, prima facie services provided to assessee would fall under section 65(105)(z).

SesaSterlite Ltd. v. Commissioner of Central Excise, Tirunelveli [2016] 69 taxmann.com 251

2.0 With poor financial position - No Evasion penalty on account of non-payment

The Supreme Court of India held that where assessee had admitted tax liability but did not pay tax due to poor financial position or due to non-recovery of service tax from customers, assessee cannot be held guilty of evasion and evasion penalty cannot be levied.

Delhi Transport Corporation v. Commissioner of Service Tax.[2016] 69 taxmann.com 175.

3.0 Withdrawal of area-based exemption in mid period is ultra vires and hit by promissory estoppels

The High Court of Gauhatiheld that when Central Government had assured 10-year exemption for tobacco/pan-masala manufacture in North-Eastern States, withdrawal of said exemption in mid-term was ultra vires doctrine of promissory estoppel and, therefore, exemption was restored for units already established.

DharampalSatyapal Ltd. v. Union of India.[2016] 69 taxmann.com 159.

4.0 Modvat credit unused due to departmental restriction allowed to be taken in Cenvat account

The High Court of Patna held that if MODVAT credit could not be used by assessee due to restriction imposed by Department, balance lying in MODVAT account must be allowed as credit in CENVAT account.

Commissioner of Central Excise v. Bata India Ltd. [2016] 69 taxmann.com 216.

5.0 Internal audit services are eligible for input service credit

The CESTAT, Ahmedabad Bench held that internal audit services received from Chartered Accountant for audit of day-to-day operations; and advertisement services by way of hoardings are eligible for input service credit.

Essar Oil Ltd. v. Commissioner of Central Excise, Customs & Service Tax, Rajkot.[2016] 69 taxmann.com 102.

FEMA / INSURANCE

1.0 Govt allows 100% 'automatic' FDI in ARCs

The Centre has allowed 100 per cent foreign direct investment (FDI) in asset reconstruction companies (ARCs) under the automatic route.

2.0 RBI issues norms for branch offices by foreign entities

The Reserve Bank of India said an application from a person resident outside India for opening of a branch office / liaison office / project office in India will require its prior approval in cases where the principal business of the applicant is in one the four sectors -- Defence, Telecom, Private Security and Information and Broadcasting.

Further, the central bank approval will be required in cases where the applicant is a citizen of or is registered/incorporated in Pakistan; the applicant is a citizen of or is registered/ incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands; and the applicant is a Non-Government Organisation (NGO), a Non-Profit Organisation, or a Body/ Agency/ Department of a foreign government.

According to the RBI, the non-resident entity desirous of establishing a BO/LO in India should have a financially sound track record.

An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC) from its parent/ group company, subject to the condition that the parent/ group company satisfies the prescribed criteria for net worth and profit. The LOC should be issued by the applicant's parent / group company which undertakes to fund the operations if required.

3.0 RBI allows up to 100% FDI in credit information firms

A credit information company aggregates and analyses data of individuals and businesses and puts out a credit score which is an indicator of creditworthiness of that individual or business. Higher the credit score, lower is the chance of default by that individual or business. Currently, India has four credit information companies - CIBIL, Experian, Equifax and CRIF High Mark. Investment by foreign portfolio investors has been limited to a maximum of 10 per cent. Currently, investments by a person in a credit bureau are limited to 10 per cent of its equity capital. However, investments under FDI are permitted up to 100 per cent under automatic route, subject to certain conditions.

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.66	0.63	0.64	0.49
SENSEX	26440.60	25720.56	24623.34	25252.32
NIFTY	8122.15	7881.90	7486.15	7683.30
CRR (%)	4	4	4	4
REPO (%)	6.50	6.50	6.75	6.75
REVERSE REPO (%)	6.00	6.00	5.75	5.75
Gold (per 10 gm)	30320.00	29972.00	29703.00	25324.00
Silver (per kg)	41093.00	41273.00	37607.00	33841.00
Crude (USD/bbl)	48.57	44.22	38.61	40.45
₹ vs USD	67.0737	66.72	67.09	66.79
₹ vs Euro	75.5116	75.96	74.94	73.46
₹ vs 100 Yen	63.32	61.35	59.13	54.91
₹ vs RMB	10.17	10.25	10.88	10.37
₹ vs Pound	95.1172	96.11	95.75	101.37
MCX Aluminium (per kg)	105.50	105.55	105.15	98.75
MCX Copper (per kg)	303.70	315.05	335.90	304.05

**As on June 10, 2016* *(Sources: MoneyControl, NSE, BSE, RBI, MCX)*

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QUICK UPDATES

- Firms with a turnover of over Rs. 10 lakh who go in for arbitration proceedings will be liable to pay service tax at the rate of 14 per cent.
- Cenvat credit in respect of Krishi Kalyan Cess on taxable services shall be utilised only towards payment of Krishi Kalyan Cess on taxable services.
- Corrupt individuals will not be eligible to declare their black money under compliance window.
- The Income Tax department notified four new forms for those who wish to declare their untaxed funds and properties under the one-time domestic black money compliance window.
- CBDT clarified that Publishing houses would be eligible to claim additional depreciation on plant and machinery deployed by them.
- RBI allows up to 100% FDI in credit information firms
- SEBI made it mandatory for the top 500 listed companies to have a policy for declaring dividends to investors.
- Capital market regulator SEBI is planning to tweak the rules to make it easier for corporates to settle cases related to breach of securities laws.
- SEBI has proposed to ban key management personnel and relatives of warehouse service providers from trading on the exchange that has availed its services.
- The government has broadened the ambit of its Merchandise Exports from India Scheme (MEIS) and scrapped a requirement for exporters to submit landing certificates of goods to avail of benefits under the MEIS.

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