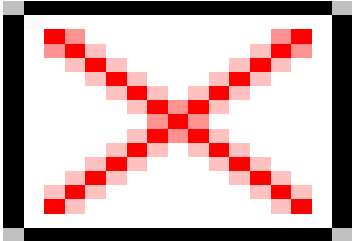


**Notification fiasco - Who is responsible for confusion? Madam Chairman, will you stop this 'smuggling' in Notifications?**



**TIOL-DDT 1928**

27.08.2012

Monday

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**INDICATIVE**

of the deteriorating standards of tax administration and irresponsible drafting reaching the highest offices, this year's budget has seen many corrections as a result of careless drafting. While some of the corrections are made through corrigenda, some are secretly smuggled in leaving stakeholders unaware of such amendments. In the budget copy of the Notification No 12/2012 Cus dated 17.03.2012, against serial No 148, the following conditions are seen:

S. No.	Chapter	Description of the goods	Standard rate	Additional rate	Condition No.
1	2	3	4	5	6
148	28, 29, 30 or 38	The following goods, namely:-	Â	Â	Â
Â	Â	A) Life saving drugs / medicines including their salts and esters and diagnostic test kits specified in List 4	Nil	-	-

Â	Â	(B) Bulk drugs used in the manufacture of life saving drugs or medicines at (A)	Nil	-	5
Â	Â	(C) Other life saving drugs or medicines	Nil	Nil	10

The copy of the Notification available on the website of <http://indiabudget.nic.in/ub2012-13/cen/cus1212.pdf> also shows the condition 5 against the goods covered under entry (B) and condition 10 for the goods covered under entry No (C). All the print and electronic media also carried these Notifications with the above conditions.

But, suddenly for the reasons best known to the CBEC, in the copy of the Notification available on CBEC website, condition No 5 is not seen and a “-“(dash) is seen against goods covered under (B). This means the importers availing exemption need not satisfy the condition 5 for the goods covered under entry (B).

The copy available on CBEC website right now shows this entry as under:

S. No	Chapter	Description of the goods	Standard rate	Additional rate	Condition No.
1	2	3	4	5	6
148	28, 29, 30 or 38	The following goods, namely:-	Â	Â	Â
Â	Â	(A) Life saving drugs / medicines including their salts and esters and diagnostic test kits specified in List 4	Nil	-	-

Â	Â	(B) Bulk drugs used in the manufacture of life saving drugs or medicines at (A)	Nil	-	-
Â	Â	(C) Other life saving drugs or medicines	Nil	Nil	10

Did the Board really want to remove the condition 5 in the above entry? If so, why the same should be carried secretly without issuing any corrigendum or any amending notification? Now, whether the importers have to follow the Notification as it is available in the CBEC website or should they follow the original Notification available in Indiabudget website? Which is the correct version? Interestingly, the Hindi version of the Notification available on CBEC website still shows condition against entry (B).

The Condition 5 reads as:

¶If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.¶

This is a very important condition and there is no reason why this should be surreptitiously removed, especially when this condition existed even in the previous version of this notification that is 21/2002-Cus.

**There is a remark at Notification 12/2012 on CBEC website that ¶English version is updated with all the corrigenda issued till 30th May 2012¶. The last corrigendum made known to public was the 7th one which was issued on 13.04.2012.. Does this mean many other corrigenda were issued from 13.04.2012 to 30th May 2012 and the CBEC is shy of making them public? Why did the CBEC website remove all the seven corrigenda issued till 13.04.2012 from their website? They don't want the public to count their mistakes? If that be the case, they can issue any number of corrigenda without making them public and can simply put a remark ¶Notification corrected upto ...). Sevottam at the highest level?**

The CBEC has a new Chairman - a dynamic lady. Will she try to put an end to this smuggling of laws by the highest body? It is perfectly human to make a mistake (or even hundreds of them as our Board usually does), but the Board should be mature enough to admit the mistakes and correct them instead of smuggling in corrections and confusing the assesseees, publishers, officers and even the judiciary.

If after so many years of experience in manufacturing notifications, you cannot draft a notification correctly or correct it correctly, there is something terribly wrong and such wrongs cannot and should not be allowed to continue. It is sheer arrogance and contempt for the rest of the world that a gazetted notification can be tinkered with.

Madam Chairman, Your Notification Factory needs urgent repairs. Irresponsible legislation with irresponsible arrogance will cause irreparable damage to the system.

### **AAR cannot reject an application on ground that subsidiary company's appeal is pending in CESTAT - HC**

**IN GSPL India Transco** [\(2012-TIOL-02-ARA-ST\)](#)

case, the Authority for Advance Ruling rejected an application on the ground that an appeal on an identical issue of a subsidiary company was pending before CESTAT. This was challenged in the Gujarat High Court and the High Court in a decision last week quashed this order and directed the AAR to decide the issue.

Can a High Court quash an order passed by the AAR which is headed by a retired judge of the Supreme Court? This issue had already been decided by the Supreme Court in *Columbia Sportswear Company v. Director of Income Tax, Bangalore*, - [2012-TII-04-SC-LB-INTL](#).

We bring you this judgement today. Please see [Breaking News](#).

## Committee for Reforming Regulatory Environment for Business in India

### THE

report of The World Bank and the International Finance Corporation, entitled “Doing Business 2012: Doing business in a very Transparent World”, India has been ranked at a low of 132 amongst a sample of 183 countries, although there is a seven point improvement over 2010 ranking of 139. However, India continues to lag behind even the BRIC and SAARC countries on most of the parameters.

Government feels that there is a need to conduct an in-depth study into the entire gamut of regulatory framework and come out with a detailed road map for improving the climate of business in India in a time bound manner. Such an exercise needs to be undertaken for periodical improvement in the ranking, leading to a situation where India gradually moves towards upward position with almost zero hassles.

To achieve this, it has been decided to constitute a Committee to conduct this study and prepare a detailed report within a period of six months. The Committee chaired by former SEBI Chief Damodaran has ITC Chairman Y C Deveshwar, Tata Sons Director Ishaat Hussain, Infosys Chairman Kamath and 17 other Members.

[MCA General Circular No. 26/2012, Dated: August 23, 2012](#)

### IRS Association condoles Daya Shankar's Demise

THE Indian Revenue Service (Customs & Central Excise) Association held a condolence meeting at New Delhi.

The following suggestions were made to keep the memory of the Legend, according to Metta Rama Rao, President of the Association.

1. Naming of Multi Disciplinary School of Intelligence at NACEN Mumbai as Daya Shankar Multi Disciplinary School of Intelligence
2. Naming the Seminar Hall at Centre of Excellence, NACEN, Saket as Daya Shankar Hall
3. Instituting an Award in his memory for the IRS Probationers
4. Instituting a Memorial Lecture on Leadership and Selfless service
5. Scholarship in his memory for meritorious children
6. Naming Patrol Boats in his name
7. Instituting Professional Excellence Award to officers excelling in anti-smuggling work
8. Incorporating in NACEN Curriculum (Chapter on daredevilry and devotion to duty of Customs officers, including those of late Dr. Daya Shankar, IRS in the Book: Reflections of a Revenue Officer by Mr. AK Pande, Ex-DG DRI & ex-Member, CBEC )

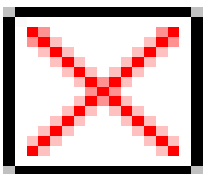
### Dial/Mail your Chairman - Regular and Open Communication Channel with CBDT Chief

THE new CBDT Chairman wants to establish a Regular and Open Channel of Communication with **any and every Member of the Department**.

She can be contacted on her official Telephone Number between 10 AM and 11 AM on all Working Days.

Members of Income Tax family are also free to get in touch with Chairman, on a dedicated e-mail account, [chairmanhelpdesk@incometaxindia.gov.in](mailto:chairmanhelpdesk@incometaxindia.gov.in)

Jurispruden<sup>tiol</sup> – Tuesday's cases



Central Excise

**Inasmuch as Tribunal has already passed an order remanding matter in respect of very same order-in-appeal filed by appellant, it could not have entertained the appeal filed by Revenue: CESTAT**

**THE** fact of remand by this Tribunal and consequently allowing the appeal by the Commissioner (Appeals) was not brought before this Tribunal when the Tribunal was considering the Revenue's appeal on 05.01.2010. In view of the said position, the Tribunal has decided the matter by upholding the demand while setting aside the penalty.

### **Income Tax**

**Whether mere earning of income in excess of expenditure by an educational institution, can take away its eligibility for claiming exemption u/s 10(23C)(vi) - NO: HC**

THE issues before the Bench are - Whether fees charged for placement and training can be considered excess and in violation of exemption granted u/s 10(23C)(vi), even when the same has been allowed under the state legislation enacted in 2007, pursuant to the judgment of Supreme Court - Whether mere earning of income in excess of expenditure by an educational institution, can take away its eligibility for claiming exemption u/s 10(23C)(vi); Whether the status of exemption is lost, if the educational institution indulges in any commercial activity, not incidental to imparting of education; Whether in view of this position, income earned from maintenance of trees on the campus, when applied for maintenance of infrastructure of the educational institution, is also a non educational activity and Whether quantum of such income and its application out of the total income from educational activities, needs to be carefully ascertained, before arriving at any such conclusion.

### **Service Tax**

**Demand confirmed is without authority of law and is not for recovering any loss of Revenue that has occurred - It is based on 'heads I win tails you lose' type of argument: CESTAT**

### **THE**

demand confirmed in the impugned order is without authority of law and is not for recovering any loss of Revenue that has occurred. It is based on 'heads I win tails you lose' type of argument adopted by Revenue in matters which are already decided against Revenue. No merits in the argument of Revenue and hence the appeal is allowed.

**See our columns Tomorrow for the judgements**

Until Tomorrow with more **DDT**

Have a Nice Day.

Mail your comments to [vijaywrite@taxindiaonline.com](mailto:vijaywrite@taxindiaonline.com)