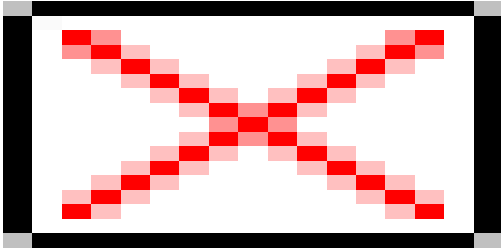


Bail for Terrorist - jail for businessman?



TIOL-DDT 2499

18.12.2014

Thursday

AS per Section 212(6) of the Companies Act 2013;

For certain offences,

no person shall be released on bail unless the prosecutor has been given notice and where the prosecutor opposes it, the court is satisfied that reasonable grounds for believing that the person is not guilty of the offences.

There was such a provision in the Prevention of Terrorism Act (POTA). POTA was repealed, but this provision was inserted in the Companies Act.

This kind of draconian provisions was sought to be deleted from the statute by the Companies (Amendment) Bill 2014 which the Lok Sabha passed yesterday.

Replying to the debate, Finance Minister Arun Jaitley said, "

When we invite the rest of the world to come to India, form a company, do business and invest in India, are we trying to say that in case you commit any of these offences you will never get bail ?"

Amendments to Companies Act - Ease of Doing Business in India

A Bill to make it easy for Companies to do business in India?

Yesterday the Finance Minister said in the Lok Sabha, "it is companies which create jobs. The West Bengal Government does not." Earlier he had mentioned about the closure of Nokia Plant in Tamil Nadu

- "On the outskirts of Chennai, Sriperumbudur, an industrial area has come in. One major plant, manufacturing telecommunication handsets, has closed down because of taxation reasons. Just by closure of one major plant, 54,000 jobs lost. When we are talking in terms of ease of doing business, etc., these are not some notional concepts. This is in effect, the direct impact of what our attitude is and how it affects the larger economy of the country."

Why these amendments and what do they correct?

The FM explained:

1. Ease of doing business
2. Drafting errors

3. Oversight

4. Some provisions which are ex-facie oppressive to an environment to do business

The Babus in the Corporate Affairs Ministry are as good as their counterparts in the Finance ministry - and this is no compliment.

The FM said,

There are offences companies commit. If there is a company, which does not follow the procedure and starts collecting deposits, it is a punishable offence. In the Act, they forgot to make it an offence. So it is a case of an oversight, which is being rectified.

The Finance Minister said on fraud reporting:

There is this enabling provision about fraud. When you are auditing the affairs of a company -this is a view put up by the Institute of Chartered Accountants - there may be dozens of irregularities that you will find out. Is every one of them to be reported to the Central Government or are the major ones to be reported?

There is a principle of de *minimis* (please see [DDT 358](#)) that triviality is ignored. So, what is very small can be ignored and what are major ones are to be reported. All that it says is that a threshold will be fixed by the Government beyond which all such requirements will have to be reported; otherwise the Department of Company Affairs will become the largest Department in the Government of India. It will have only complaints arising out of some voucher for Rs. 100 which is not available.

The FM concluded:

"There are some provisions, which we are easing. There are some, which were oversight. There are some, which were left out. And there are some which came in but came in as a part of this thinking that we must make doing business extremely difficult. So if somebody is arrested and he belongs to a company, a terrorist can get bail but he should never get bail. Now, this kind of thinking, I am afraid, we do not subscribe to. I, therefore, commend to this Honourable House that these amendments be accepted."

And the Hon'ble House accepted them.

Why are Companies Limited?

PARTICIPATING in the debate on the Companies Bill in the Lok Sabha yesterday, KV Reddy, Member from Chevella said,

Growing up I always wondered why companies were called 'Limited' like ABC Airport Limited and XYZ Steels Limited. Companies want to grow and increase their market share and have a bigger market share ever. But still they are called 'Limited'. Then, I came to know the word 'Limited' does not apply to their growth or to their aspiration. It applies to the liabilities of the owner directors, which means, companies can do unlimited damage, unlimited fraud but the liabilities of the owner directors are limited.

Immediately' or 'within such time'?

AS per Section 143(12) of the Companies Act,

if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

A Member of the Lok Sabha had a doubt - Is it 'immediately' or is it 'within such time'?. He said, "

When a fraud happens, if it is not reported immediately, if it is reported after it becomes a public issue, if it is reported after they have taken deposit from public or if it is reported after they have taken a bank loan, I think it becomes too late."

The Government has already clarified this position in the Companies (Audit and Auditors) Rules, 2014 , Rule 13 of which stipulates,

13. Reporting of frauds by auditor.

-(1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge

GST Bill Cleared?

THERE

is no official announcement or Press Release from the Government, but everybody knows that the Cabinet has cleared the GST Bill, which may be introduced in the current session of Parliament as the 122nd Constitution Amendment Bill. "Highly placed sources" in Government are leaking bits and pieces of information on the cabinet decision. All the indirect taxes imposed by the Centre and the States, including the service tax, excise duties, stamp duties, entry tax, and central sales tax, will be subsumed into just one tax, the GST. But things are not that simple - the centre has a lot of convincing to do with the States.

It seems real estate will also suffer GST - and the Government hopes to reduce black money transactions because of the tax!

Now that GST has visibly come back to life, all the seminar experts will be back on job and we can hear a lot of noises from several concerned authorities who are not all concerned with GST.

Also please see our [CobWeb](#) today.

Foreign Exchange -Conversion Rate - CBEC overvalues YEN by a Hundred Times

CBEC has issued a notification yesterday determining the rate of exchange of conversion for the Japanese YEN.

As per the notification, the rate of exchange for **one unit of foreign currency equivalent to Indian rupees** for Japanese YEN for Import would be Rs. 55.20 and for export, it would be Rs. 53.90

According to RBI, the rate of exchange of one YEN as on 17th December is Rs. 0.5434. So, the Board's rate is over hundred times more than the RBI rate. This means if you are importing one crore YEN worth of goods from Japan, according to the Board, the value in Indian rupees would be 55.2 crores, whereas the RBI value would be Rs. 54.34 lakhs. And if you have to pay a 5 percent duty on those goods, Board will like to have Rs. 2.76 Crores as duty while the value of the goods is only 54 lakhs!

Where did the Board bungle?

They have amended Notification No. 113/2014-CUSTOMS (N.T.) dated 4th December, 2014, Schedule-II, Sl. No.1. This prior to the amendment read as:

SCHEDULE-II

Now they have amended it as:	
Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
(3)	SCHEDULE-II
	(b)
Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(3)	(For Export Goods)
	51.10

In the amendment the rate should have been hundred units instead of one unit. Of course (b) they can say that they have amended only the entry and not the heading! "COPY and Paste CALAMITY"	(b) (For Export Goods)
Babus can be careless - the Minister will defend them in Parliament.	53.90

[Notification No. 115/2014 - Cus.,\(N.T.\), Dated: December 17, 2014](#)

Cadre Review - New Commissionerates - CESTAT Appeal Forms Amended

CONSEQUENT

to Cadre Restructuring certain new Commissionerates have been created, Board has received references from the field formations requesting for assigning/creating alpha-numeric codes for new Commissionerates.

So, Board has issued revised alpha-numeric codes for all Commissionerates.

References have been received from field formations regarding difficulties being faced in accommodating order number in given three boxes in cases where the Adjudicating Authority/Commissioner (Appeals) has passed a common order disposing of multiple cases or appeals involving more than one party and wherein range of order number has to be assigned to such orders viz. order no 12-15 or 12 to 15.

In such cases, Board now directs that

Adjudicating Authority/Commissioner (Appeals) may pass individual orders in each case and assign single number only viz Order No 999 etc.

In Commissionerates where more than 999 orders are being passed, the number of boxes (meant for order number) are being increased from three to four to accommodate an order number exceeding 999. Accordingly the total number of boxes given for alpha numeric code is increased from 21 to 22.

Hope the Board also finds time to carry out the amendments as suggested by us in [DDT 2483/26.11.2014 - Mandatory fixed pre-deposit - Appeal forms need amendment](#).

[CBEC Circular 991/15/2014-CX., Dated: December 17, 2014](#)

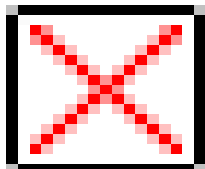
A Prophet is without honour in his own country. Substitute "citizen" for "prophet" Supreme Court in a judgement delivered yesterday

Huge Overvaluation in import of Coal?

TIMES

of India reports today that DRI has unearthed a scam involving companies inflating the value of coal imports from Indonesia for their power plants thus siphoning money abroad. Initial estimates by the agency pegged the overvaluation at Rs 29,000 crore in the period 2011-2014. The modus operandi adopted by the companies is that while coal imports would directly be shipped from Indonesia, the invoices will be routed through an intermediary based either in Hong Kong, Singapore or Dubai. The inflated amount will be sent to the intermediary who, in turn, would remit the actual value to the Indonesian supplier. The overvalued component would be diverted to tax havens. The intermediary is either related to the importer or handles such operations on commission basis.

Jurisprudence Friday's cases



Service Tax

Show Cause Notice and orders sent by Speed Post is not valid service - COD applications allowed - Two SCNs were served personally to applicant - on same issue, as Tribunal has confirmed ST demand in case of Reliance Michigan JV, on merits, revenue has case - Pre-deposit ordered in r/o tax demand made under two Show Cause Notices: CESTAT

IN

the matter of the COD application the applicant submitted that they never received the SCN or the impugned orders passed in the years 2011 & 2012 and they came to know about the same only on 12.08.2013 and, therefore, obtained the copy of the same on 25/29.10.2013 and appeals were filed on 02.12.2013. Inasmuch as it is pleaded that the delay be condoned. It is also submitted that they came to know from inspection of the records that the SCNs and orders were sent through Speed Post and which is not a valid service in terms of s.37C of the CEA, 1944 as held by the Bombay High Court in the case of **Amidev Agro Care Pvt. Ltd. - [2012-TIOL-395-HC-MUM-CX](#)**. The applicant contended that the orders are required to be set aside.

Income Tax

Whether if assessee makes wrong claim of royalty which actually pertained to earlier AYs, it is fit case to attract penalty if assessee fails to give valid reasons for making such claims twice - YES: HC

THE

assessee company was engaged in the business of leather chemical manufacture and trading. It had claimed deduction of royalty which was paid to M/s Bayer AG Germany under the agreement. As no TDS was paid during the year the same was added back at first instance and in the computation it was claimed as deduction on the basis of TDS payments. The same was done as per the provisions of section 40(a)(i). The assessee was asked to file full details of TDS payments made in respect of these royalty payments. After verifying these details it was noticed that some of the TDS certificates pertain to the earlier year and the part of the royalty payment attributable to these certificates had already been claimed and allowed as deduction to the assessee in the earlier years. When asked about this the assessee had admitted the error and stated that in AY 2002-03 a sum which had been already claimed in earlier year was again inadvertently claimed as deduction in the computation of income. Thus an addition was made and penalty for concealment was levied.

The issue before the Bench is - Whether if assessee makes wrong claim of royalty payment which actually pertained to earlier AYs and was also allowed by the Revenue, it is a fit case to attract penalty if the assessee fails to give valid reasons for committing such an error of making claims twice against same TDS certificates. YES is the answer of the High Court.

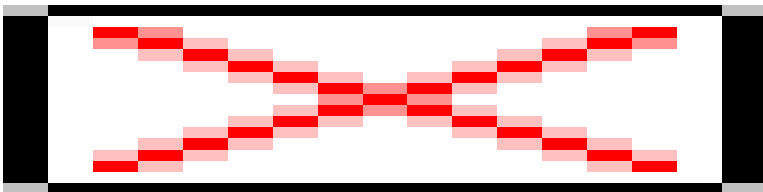
Central Excise

Sika Latex & Sika Latex Power are manufactured goods and chargeable to CE duty - addition of water to Inputs is not simple process otherwise even customers could have done same while using it - matter remanded for extending cum-duty benefit: CESTAT

IT

is the claim of the appellant that for manufacturing the product Sika Latex and Sika Latex Power, they are only adding water to inputs namely "Styrofan D 623 AP" and "Apcotex TSN 100". The appellants' claim is that since the manufacturing process undertaken by them is only of diluting the inputs and repacking the same, their activities do not amount to manufacture and hence, no excise duty is payable on their final product namely, Sika Latex and Sika Latex Power.

See our Columns Tomorrow for the judgements



Until Tomorrow with the **2500th DDT**

Have a nice day.

Mail your comments to vijaywrite@tiol.in