

THE NEWSLETTER

BOMBAY HC LIFTS BAN ON SALE OF MAGGI

The much awaited wait for Nestle Maggi is expected to be over soon. The Bombay High Court Bench comprising of Justice Kanade and Justice Colabawala on August 13, 2015 passed an order setting aside the impugned orders imposing a ban on the manufacture, supply and sale of all 9 variants of Nestle. The impugned orders passed by the Food Safety and Standards Authority of India ("FSSAI"), were set aside and Nestle was directed to send 5 samples from each batch which are in their possession, to three Food Laboratories accredited and recognized by NABL situated in Andhra Pradesh, Mohali and Jaipur and if the lead content was found within permissible limits they would be allowed to start the process of manufacture, however, after the manufacturing process the products are to be tested in the three accredited laboratories stated above and if the lead content in the same is within permissible limits i.e. 2.5 ppm, then Nestle may start selling its product again.



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GOVT RENEWS IT'S ANTI-DUMPING POLICY ON SPECIFIED GOODS IMPORTED FROM CHINA

The Govt. of India has imposed anti-dumping duty on specified goods imported from China at the rates specified vide its Notification No. 15/9/2014-DGAD, dated the 5th May, 2015. The Govt. had initiated a review in the matter of continuation of anti-dumping duty on imports of steel and fibre glass measuring tapes and their parts and components originating in or exported from the People's Republic of China on 2014. The step was taken in light of the continued dumping of the of steel and fibre glass measuring tapes and their parts from China which are causing injury to the domestic market. The Govt. felt that such a step was required to discourage any such dumping in the Indian market so that the domestic industries could thrive.





AADHAAR CARD CAN ONLY BE USED FOR PDS SCHEME AND LPG SUBSIDY: SC

The Hon'ble Supreme Court Bench comprising of Justice Chelameshwar, Justice Bobde and Justice Nagappan on 11th of August 2015 has reviewed the situation of the Aadhaar Card Scheme. It was contended before the hon'ble court that the collection of bio-metric data is in violation of Right to Privacy. On the other hand, the Govt. contended that the data was safe with the Govt. and was not parted with. Also, the Govt. had spent a humungous amount of money in the project and that approximately 90 % of the population has been registered under the scheme.

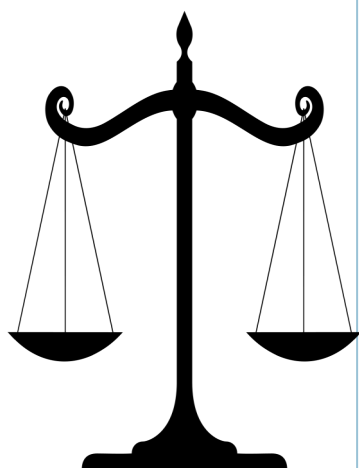
The Court refused to pass an order on merits and said that the matter should be decided by a larger bench. But, the court passed an order for the interim period wherein it stated that the Govt. may move forward with the scheme but it can only use it for the purposes of PDS Scheme and LPG Subsidy and no other purpose. The Court also asked the Govt. to make a public announcement that it is not mandatory for a citizen to obtain an Aadhaar Card.

"It is not mandatory for a citizen to obtain an Aadhaar Card."

"SANTHARA" BEYOND THE SCOPE OF ARTICLE 21

The Raj. HC on 10th of August 2015 declared that Article 21 does not include the practice of Santhara viz. widely practiced by the Jains. It was contended by the Petitioner that Right to Freedom of Religion is not absolute under Article 25. It is subject to public order, morality and health and Article 21. A practice, however, ancient it may be to a particular religion, cannot be allowed to violate the right to life of an individual. A practice may be a religious practice but not an essential and integral part of the religion. The petitioner contended that Santhara which is a voluntary fast unto death practice is an act of self-destruction, which amounts to suicide, which is a criminal offence and is punishable under section 309 of IPC.

The respondents submitted that Santhara is an essential and popular religious practice throughout the history of Jainism. The supreme object of Jainism is to show the way for liberation of the soul from the bondage of Karma. Santhara is the key to attain salvation in the least possible number of birth and death cycles. Santhara cannot be equated with a violent, passionate activity like suicide as the physiological and physical features, the intention and the state of mind, the impact on kin in the two cases are very different.



The Court held that Santhara is not an essential part of the philosophy and approach of the Jain religion. The Constitution does not permit nor include under Article 21 the right to take one's own life, nor can include the right to take life as an essential religious practice under Article 25 of the Constitution. The over-riding and governing principles of public order, morality and health, conditions the right under Article 25. Suicide is punishable under section 309 of the IPC and its abetment by person is punishable under section 306 of the IPC.

"The Constitution does not permit nor include under Article 21 the right to take one's own life"

ISSUING OF SHARES UNDER ESOP SCHEME TO PROI

As per Circular no. A. P. (DIR Series) Circular No. 04 RBI/2015-2016/128 dated 16th July, 2015, an Indian company can issue shares under Employees' Stock Option Scheme / "sweat equity shares", to its employees or employees of its subsidiaries who are resident outside India, directly or through a trust only after complying with the following conditions (i) the scheme need to be drawn in terms of regulations issued under the SEBI Act, 1992 or under Companies (Share Capital and Debentures) Rules, 2014; (ii) face value of the shares to be allotted under the scheme to non-resident employees does not exceed 5 per cent of the paid up capital; (iii) After seeking prior approval of FIPB investment in the relevant company is only allowed under Approval Route and if the relevant employee / director is a resident of Bangladesh or Pakistan; (iv) The issuing company has informed the concerned Regional Office of RBI within 30



FOREIGN INVESTMENT IN INDIA BY FOREIGN PORTFOLIO INVESTORS (FPI'S)

The Govt. vide Circular No. 71 dated February 3, 2015 and Circular No. 73 dated February 6, 2015 had imposed a restriction on FPI investment wherein it needed all future investments by a FPI in corporate bonds to have a minimum residual maturity of three years. RBI through Circular No. 06 RBI/2015-2016/131 dated 16.07.2015 has now clarified that this restriction imposed by said Circular no. 71 and Circular No. 73 is not applicable to investment made by Foreign Portfolio Investors FPIs in security receipts (SRs) issued by Asset Reconstruction Companies (ARCs). Hence, if investment is made by FPIs in SRs issued by ARCs they don't need to meet the requirement of a minimum residual maturity period of three years. However, investment in SRs needs to be within the overall limit prescribed for corporate debt from time to time.



EDITORIAL**INITIATION OF PROCEEDINGS AGAINST DECEASED PERSON**

BY: MS. ADITI TANK, ASSOCIATE AND MS. SALONI SANGHI, ASSOCIATE

The Hon'ble Supreme Court in a landmark judgement dated 29.07.2015 has clarified on the issue regarding assessment/initiation of proceedings against a deceased through his legal representatives under the provisions of the Central Excise Act, 1944 ('Act'). The brief facts of the case are that a show cause notice (SCN) was issued to the sole proprietor ('Proprietor') for the period January 1983 to December 1985 wherein excise duty was sought to be recovered under Section 11A the Act. However, on 14.3.1989, the Proprietor died and a subsequent SCN was issued to the legal representatives of the deceased asking them to make submissions with regard to the first SCN. The SCN was challenged as being without jurisdiction on the ground that the proceedings initiated against the deceased abated on his death in absence of any provision in the Act to continue proceedings against the legal representatives of the deceased. The central excise authorities continued the proceedings and a writ petition was filed before the Kerala High Court under Article 226 on the maintainability of the SCN. The learned Single Judge quashed the proceedings. The Division bench however reversed the judgment of the single Judge leading to the appeal preferred before the honorable Supreme Court.

The Appellant contented that the understanding of Sections 2(f), (3), 4(3) (a), 11 and 11A of the Act contain no machinery provision for continuing assessment proceedings against a dead individual, unlike the provisions of section 24B of the Income Tax Act, 1922 and Chapter XV of the Income Tax Act, 1961, and in absence of specific provisions, no such proceedings are maintainable. Also, looking at the definition of 'Assessee' as defined under the Act, it is defined to mean 'a person liable to pay the duty of excise under the Act'. The definition does not include Legal Representatives.

On the other hand, the Respondents contended that the sums are recoverable from an assessee under Section 11 of the Act by an attachment and sale of excisable goods belonging to the assessee and in case of shortfall, from the person himself as arrears of land revenue. Since a dead man's property can be sold and attached, the necessary machinery is contained in the Act. Reliance was placed on the definition of the term 'Person' under Section 3(42) of the General Clauses Act, 1897 and it was stated that it includes his legal representative also. The Respondents claimed that Income tax is levied on a person while the duty of excise is levied on manufacture of goods, hence the position under the two acts are different and cannot be compared.

The Hon'ble Court held that unless specific provisions/ machinery are provided for in the Act itself, the Revenue cannot proceed against the legal heirs/representatives of the deceased to recover the duty that was payable by the deceased drawing support from the its decision in *CIT, Bombay v. Ellis C. Reid*¹, wherein it was held that if legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to extract the appropriate machinery. Indeed, Section 24 B of the Income Tax Act, 1922 was inserted vide amendment to specifically provide for 'Tax of deceased person payable by representative' following the above decision of Supreme Court. The argument of the Respondent that income tax,

¹ *CIT, Bombay v. Ellis C. Reid (AIR 1931 Bombay 333)*

being a personal tax, cannot be compared to the present Act was rejected by the Court by placing reliance on *State of Punjab v. Jullunder Vegetables Syndicate*², wherein it was held that in absence of any machinery provisions to assess and collect sales tax (not a personal tax) from a deceased person, all proceedings shall abate on his death. The Court also said that the definition of 'Person' under Section 4 (3)(a) of the Act uses present tense and therefore the person referred to can only be a living person. Moreover, since it is a 'means and includes' definition it is exhaustive in nature and its meaning cannot be extended to include legal representatives. Definition of the term 'person' under General Clauses Act, 1897 does not include the legal representatives of the persons who are since deceased.

In light of the observations discussed above, it was held by the Hon'ble Apex Court that there is no specific provision with respect to a dead person under the charging section. The provisions under Section 11 is limited to recovery of only those sums which have become 'payable' to the Government. Since there is no machinery to proceed against a dead person's heirs/ legal representatives, the sum does not become 'payable' and hence Section 11 cannot be invoked. The court also rejected the reliance placed upon by respondents on *Murarilal Mahabir Prasad v. Shri B.R. Vad*³, wherein the question was whether a dissolved firm could be re-assessed to sales tax, differentiating it being a case of an individual who has died through natural causes and not a case of tax evasion and also that the necessary provisions were already contained in the act in question in that case, which are absent in this case. The Court also reiterated the principle of strict construction of taxing statutes.

On the above grounds the Hon'ble Court set aside the judgment of the Kerala High Court and restored the judgment of the Ld. Single Judge.

² *State of Punjab v. Jullunder Vegetables Syndicate* {[1966] 2 S.C.R. 457},

³ *Murarilal Mahabir Prasad V. Shri B.R. Vad* {[1975] 2 SCC 736}

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