

India  
Tax  
For Private Circulation Only

In this issue:

**Industry Updates**

**Aviation**

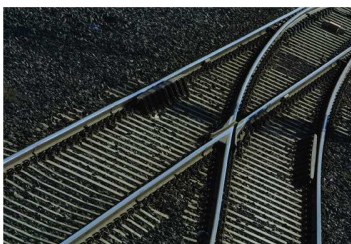
**Shipping**

**Rail & Road**

**Railway, Shipping &  
Aviation Trade Shows**

**Direct Tax**

**Indirect Tax**



## **Mumbai**

264-265, Vaswani Chambers,  
Dr. Annie Besant Road,  
Worli, Mumbai 400 030.

Tel: + 91 (022) 6619 8400

Fax: + 91 (022) 6619 8401

## **Delhi/Gurgaon**

Building 10, Tower B,  
7th Floor, DLF Cyber City,  
Gurgaon 122 022

Tel : +91 (0124) 679 2000

Fax : + 91 (0124) 679 2012

## **Bangalore**

Deloitte Centre, Anchorage II,  
100/2, Richmond Road,  
Bangalore 560 025.

Tel: +91 (080) 6627 6000

Fax: +91 (080) 6627 6409

# Transportation newsletter

October – December 2008

Volume: T/1/2009

## Industry Updates

### Aviation

#### West Bengal government to revive Chhara airstrip

The West Bengal government has initiated the process of reviving the abandoned Chhara airstrip in Purulia district, with private participation. The transport department has invited expressions of interest from private developers to revive the airstrip into a full-fledged airport using the public-private partnership route.

### Shipping

#### Hazira Port plans multi-cargo terminals

Hazira Port Pvt. Ltd (HPPL) that currently operates a 2.5-million tpa LNG terminal at Hazira in Surat district of Gujarat has put in place a plan to develop general cargo terminals with an investment of \$400-500 million over the next 3-4 years. The two partners of HPPL - Shell BV (74 per cent) and Total of France (26 per cent)-have already invested \$225 million towards infrastructure development. The remaining investment will come from a prospective port developer that will operate the new terminals and share revenue with the Shell-Total combine.

#### Chennai, Belgium ports sign MoU

Chennai Port Trust and Port of Zeebrugge, Belgium, have signed an MoU to create a 'greener' port in Chennai. The MoU aims at exchange of ideas technology and other inputs to enable Chennai Port to become a clean cargo port. Rudi Thomaes, CEO, Federation of Enterprises in Belgium, outlined five areas of cooperation between India and Belgium—dredging, training, exchange of best practices, infrastructure development in India and increasing Belgian consultation in port activities.

**Chennai**

No.52, Venkatanarayana Road, 7th Floor, ASV N Ramana Tower, T-Nagar, Chennai 600 017.

Tel: +91 (044) 6688 5000  
Fax: +91 (044) 6688 5019

**Kolkata**

Bengal Intelligent Park Building, Alpha, 1st floor, Plot No –A2, M2 & N2, Block – EP & GP Sector – V, Salt Lake Electronics Complex, Kolkata - 700 091.

Tel : + 91 (033) 6612 1000  
Fax : + 91 (033) 6612 1001

**Ahmedabad**

“Heritage” 3rd Floor, Near Gujarat Vidyapith, Off Ashram Road, Ahmedabad – 380 014.

Tel: + 91 (079) 2758 2542  
Fax: + 91 (079) 2758 2551

**Hyderabad**

7th Floor, Lingapur House, Amrutha Estates, Himayathnagar Hyderabad – 500 029

Tel: + 91 (040) 2322 2098  
Fax: + 91 (040) 2322 2098

**Cochin Port to invest Rs 10,000 crore**

The Cochin Port is investing about \$2 billion (Rs 10,000 crore) for setting up a new International Container Transshipment Terminal (ICTT), an LNG terminal, and for reconstructing old berths.

**Rail & Road****GVK Power, Indian Railways sign pact for coal supplies**

GVK Power has signed a long-term agreement with Indian Railways regarding coal supplies to the upcoming 2x270-mw Goindwal Sahib power plant in Punjab. Incidentally, this is the first IPP in the northern state. The 25-year agreement is for transporting coal from GVK's south Karanpura coalfields in Jharkhand to the power plant site.

**Study for AC trains in Mumbai: Cool comfort in sight?**

Systra of France and Rites Ltd of India have secured a contract from Indian Railways to conduct the feasibility study for running air-conditioned trains along the 60-km long Churchgate - Virar route in Mumbai.

**Railways on a roll; mulls Rs 30,000-cr spend to upgrade infra**

The Indian Railways has planned a Rs. 30,000 crore infrastructure spend with the aim of providing a much-needed fillip to the economy. This spend envisages upgrade and procurement of new assets of rolling stock during the current financial year.

**Railway, Shipping & Aviation Trade Shows**

Period – Jan 2009 – Apr 2009 (Only selected ones, sorted date wise)

**Aero India**

Start Date 11-Feb-09 End Date 15-Feb-09

Event Profile: Aero India offers an opportunity to see and experience the latest technologies, products and services in the aviation industry. It is an aviation-linked platform to find partners, build alliances, share knowledge and enhance reputation. The exhibition will cover an area of 30,000 square metres of outdoor exhibit space and 25,000 square metres of indoor space, housed in fully air-conditioned exhibit halls. In addition, the Yelahanka airfield has an extensive area for static aircraft exhibits as well as offering the flexibility of customer demonstration flights and a comprehensive daily flying display.

*Venue: Yelahanka Air Base Bangalore , Karnataka, India*

*Organised By: Confederation of Indian Industry*

## India Maritime

Date: 05-Mar-09 to 06-Mar-09

India Maritime showcases the latest in maritime, shipping and port technology and services from around the world. It returns with an exciting line up of cutting-edge maritime products and services that encompasses marine engineering and port technology.

Venue: Hotel The Park, Vishakapatnam, Andhra Pradesh, India

## India International Maritime & Logistics Expo

Date: 10-Apr-09 to 12-Apr-09

India International Maritime & Logistics Expo India is the largest annual Container Ports, Shipping and Transport Logistics Exhibition and Conference to take place in India. Ship-building, ship-repair, dredging, traffic monitoring system, maritime institutes, maritime boards will be targeting Service providers of Ship, Port & Maritime Industry, Decision Makers of Industry, Senior Government Officials, Shipping & Port Associations, Chambers of Commerce, Councils/ apex bodies.

Venue: World Trade Centre Mumbai, Mumbai, Maharashtra, India

## Direct Tax

### Shipping

- To claim benefit under Article 8 of the India-Brazil treaty, ships have to be “owned, leased or chartered” by the tax payer. Cases where the tax payer merely books cargo and sends the same to other countries through ships owned / leased / chartered by other enterprises is outside the scope of Article 8. *Cia de Navegacao Norsul, Brazil, (Mum Trib.)*
- Freight income earned by a non-resident tax payer on transport of cargo in international traffic under slot chartering arrangement taxable only in State of residence and consequently, exempt from tax under the Indian Income Tax Act (“ITA”). The provisions of the India-UK tax treaty were examined in this case. *Balaji Shipping (UK) Ltd., (Mum Trib.)*
- Assessee a shipping liner – payments to non residents as recovery and storage charges covered within the purview of section 40(a)(i) provided it is chargeable to tax under the Act in the hands of the non-resident. *Jay Container Services Co. Pvt. Ltd. (Mum Trib.)*
- Relief under Article 9 of the India-France tax treaty available for transportation of cargo by feeder vessel belonging to other enterprises only if such transportation is ancillary to the main transportation of cargo by the mother vessel; owned, chartered or leased by the assessee.

- Benefit not available merely on the ground that assessee is engaged in the shipping business globally.
- Relief available if a one to one correlation between the feeder vessels and mother vessel is brought on record.

*Delmas Shipping France. (Mum Trib.)*

## **Aviation**

- Landing & Parking charges paid to AAI is rent in nature, tax to be deducted at source u/s 194I, not u/s 194C of the ITA. *Asiana Airlines, (Delhi Trib.)*
- Fees received for security screening services and third party charter handling services from other airlines not connected directly with operation of aircrafts – hence, no relief available under Article 8(2)(b) of the Indo-US tax treaty. *Delta Airlines Inc, (Mum Trib.)*
- Tax payer filed ‘nil’ returns since it had incurred losses. It was held that section 44BBA is not a charging provision but a machinery provision; income could not be artificially computed particularly when assessee’s books reflect losses. Revenue authorities directed to compute income on the basis of books of account maintained by the tax payer. *Royal Jordanian Airline, (Delhi Trib.)*
- Rent recovered by aircraft operators from service provides, which is payable to the Airport Authority of India (AAI) not income in hands of the aircraft operator. In any event, the rent paid to AAI can be deducted from rent recovered considering the nexus. *KLM Royal Dutch Airlines, (Delhi Trib.)*

## **Indirect Tax**

### **Case Laws**

#### **Taxability of Services provided from Outside India before 18 April 2006**

- The Bombay High Court held that the service tax authorities had no authority to levy service tax on the service recipient in India under reverse charge mechanism prior to 18 April 2006 and it is only after the enactment of Section 66A that the taxable services provided from outside India are taxed in the hands of the Indian residents. Bombay High Court Decision In the matter of M/s. Indian National Ship-owners Association Vs. Union of India and Others (2008–TIOL-633-HC-MUM-ST)

### **Service recipient not liable to pay service tax on Goods Transport Agency (GTA) service before 2003**

- The Supreme Court has held that service receivers were not required to file any return under Section 70 of the Finance Act, 1994 prior to 2003. Such liability was cast upon them only under Section 71A introduced by Finance Act, 2003. Thus, no notice under Section 73 for non-filing of the return under Section 70 could be issued for recovery of service tax and interest thereon from service receivers. CCE vs. Gujarat Carbon & Industries Ltd. [(2008) 17 VST 55 (SC)]

### **Notifications**

#### **Notification No.33/2008-ST., Dated 7 December 2008**

- In continuation to the earlier Notification No. 41/2007-ST., dated 6 October 2007 as amended, the Central Government has granted exemption to exporters in respect of 'Clearing & Forwarding Services' used in relation to export of goods.
- The said exemption is subject to fulfillment of prescribed conditions. Further, the exemption is granted by the way of refund of tax collected by the service provider.

#### **Notification No.1/2009 – ST., Dated 5 January 2009**

- The Notification grants exemption to eight specific services provided to Goods Transport Operator. These services are Clearing & Forwarding agent's service, Manpower recruitment services, Cargo handling service, Storage & Warehouse Service, Business auxiliary service, Packaging Service, Business Support Services, and Supply of tangible goods service. The exemption is subject to fulfillment of prescribed conditions.

---

[Home](#) | [Security](#) | [Legal](#) | [Privacy](#)

#### **Disclaimer**

These materials and the information contained herein are provided by Deloitte Touche Tohmatsu India Private Limited and are intended to provide general information on a particular subject or subjects and are not an exhaustive treatment of such subject(s).

Accordingly, the information in these materials is not intended to constitute accounting, tax, legal, investment, consulting, or other professional advice or services. The information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser. None of Deloitte Touche Tohmatsu, its member firms, or its and their respective affiliates shall be responsible for any loss whatsoever sustained by any person who relies on these materials and the information contained therein.

These materials and the information contained therein are provided as is, and Deloitte Touche Tohmatsu India Private Limited makes no express or implied representations or warranties regarding these materials or the information contained therein. Without limiting the foregoing, Deloitte Touche Tohmatsu India Private Limited does not warrant that the materials or information contained therein will be error-free or will meet any particular criteria of performance or

quality. Deloitte Touche Tohmatsu India Private Limited expressly disclaims all implied warranties, including, without limitation, warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security, and accuracy.

Your use of these materials and information contained therein is at your own risk, and you assume full responsibility and risk of loss resulting from the use thereof. Deloitte Touche Tohmatsu, its member firms, or its and their respective affiliates will not be liable for any special, indirect, incidental, consequential, or punitive damages or any other damages whatsoever, whether in an action of contract, statute, tort (including, without limitation, negligence), or otherwise, relating to the use of these materials or the information contained therein.

If any of the foregoing is not fully enforceable for any reason, the remainder shall nonetheless continue to apply.

For Private circulation only.

### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu, a Swiss Verein, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu and its Member Firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in 140 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte's 165,000 professionals are committed to becoming the standard of excellence.

Deloitte's professionals are unified by a collaborative culture that fosters integrity, outstanding value to markets and clients, commitment to each other, and strength from cultural diversity. They enjoy an environment of continuous learning, challenging experiences, and enriching career opportunities. Deloitte's professionals are dedicated to strengthening corporate responsibility, building public trust, and making a positive impact in their communities.

© 2009 Deloitte Touche Tohmatsu India Private Limited.

Deloitte Touche Tohmatsu India Private Limited. Registered Office: 12, Dr. Annie Besant Road, Opp. Shivsagar Estate, Mumbai 400 018. India.