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**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)



# BANGALORE BRANCH OF SIRC NEWSLETTER

Vol XXIV | Issue 09 | November, 2009



**ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವದ ಶುಭಾಶಯಗಳು**



# Committee's Communique

Dear Professional Colleagues,

**Cover Page :** This month we celebrate the birth of our state Karnataka popularly known as Kannada Rajyotsava. India was ruled by rulers over centuries. In the course of conquering India britishers won against every dynasty and had made India as one nation. After the birth of independent India the new government abolished the concept of princely state and came with an idea of stratifying the nation in the form of States. The states were formed based on the citizens speaking a particular language. Likewise in south four states were formed in the name of Karnataka, Andhra, Tamil Nadu & Kerala.

After Indian independence, the Wodeyar Maharaja acceded to India. In 1950, Mysore became an Indian state, and the former Maharaja became its rajpramukh or governor, until 1975. The Ekkikarana movement which started in the latter half of the 19<sup>th</sup> century, culminated in the State Reorganisation Act of 1956 which provided for parts of Coorg, Madras, Hyderabad and Bombay States to be incorporated into the state of Mysore. The state of Mysore was formed on November 1, 1956 and was renamed Karnataka in 1973. Since then November 1<sup>st</sup> of every year is celebrated as Kannada Rajyotsava / Karnataka Rajyotsava.

K. Changalaraya Reddy became the first Chief Minister of Mysore State. The Maharaja of Mysore H H Sri Jayachamarajendra Wodeyar became the Rajapramukh later the Governor of the State.

Karnataka even though was formed based upon people speaking Kannada has seen a tremendous change over the decades. The state has produced great souls and to name a few Fearless Queen in Kittur Rani Channamma, a lion warrior known as Tiger of Mysore, Tipu Sultan who gave sleepless nights to Britishers. Post independence we saw Field Marshall K.M. Kariappa, Rastrakavi Kuvempu, Bharataratna awardees Sir. C. V. Raman, Sir. M. Vishweshwaraiah.

Sportspersons G. R. Vishwanath, Rahul Dravid, Anil Kumble, Pankaj Advani, Mahesh Bhupathi, Nisha Millet. Dada Saheb Awardee Dr. Rajkumar. Karnataka has a rich heritage and has contributed enormously in the field of literature. It has produced seven Jnanapeeta Awardees. It has given the karnatic music which is considered as the toughest and the ultimate achievement in the field of music to this entire world. We should be grateful to both Sri. Purandara Dasa and Sri. Kanaka Dasa for giving us the karnatic music. Prominent saints Shankaracharya and Ramanujacharya lived in Karnataka for a long time and established deep roots. Saints Madhwacharya and Basaveshwara were indeed born in Karnataka and have left a lasting impact on the mankind.

The state is a host of many historical places, to name a few it has Mysore, Hampi, Bijapur, Belur & Halebeedu, Gokarna, Dharmastala, Sringeri, Mantralaya, Udupi, Shravana Belagola and Kollur.

Mysore Dasara and Bangalore Karaga are famous celebrations in the state which draws international audiences. This celebrations are a showcase to the world of our ancient cultures and traditions and this festivities brings in communal harmony in the state.

Bangalore being the capital of the state has undergone a sea change since its formation by Sri. Kempe Gowda. As we go through the memory lanes Bangalore once called as the garden city, pensioners paradise and an Air Conditioned City has turned itself into an Hitech city, Technology Hub of the nation amidst still considered as clean and safe city to live in. Initially it was a place inhabited by people speaking kannada and now it is turned to be a cosmopolitan city which has people coming and living from not only all parts of the country but also from other nations. Bangalore and especially the bangaloreans are whole hearted people who have allowed others to come and settle in this city and also helped them to build in their careers.

Coming to our profession, the state has the largest branch of the country in bangalore. Lets all be proud to be part of this prestigious branch.

## **Workshops on FEMA and Real Estate :**

Members as previously announced the workshops on FEMA and Reals Estate have been postponed to the month of December. Due to preoccupation of few speakers, we were forced to have these workshops in the month of December. Since, the members need to complete their CPE Credit before December, we have CPE credits for these workshops and hence it is not organized jointly as was mentioned earlier. Here we would like to inform the members, that Workshop on VAT was very well received and highly appreciated by the members who attended in large numbers. We thank CA. Venkataramani the co-ordinator for devising this knowledgeable and purposeful workshop.

## **Updation of Members Profile :**

Members, we request you to update your mobile number, e-mail id's and the correspondence address through our website. The link for updation of profile will be provided in our website by 6th of November, 2009. Kindly visit the website and review / update your profile.

## **Announcements for Students :**

Students of Final (old) Examination have been granted an extension of two more attempts ie., May and Nov 2010 to complete their examinations. S. Vaidyanathan Aiyar Memorial Fund has announced Scholarship to 60 articulated assistants. Last date for submission of applications in prescribed form is 30th November, 2009. Interested students can visit [www.icaai.org](http://www.icaai.org) for further details.

**Greetings from the Committee :** The entire managing committee wishes "Happy Birthday and Happy Anniversary" to all those members who were born in the month of November or who got married in the month of November.

## PROGRAMMES - A BIRDS - EYE VIEW - November / December 2009

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
02.11.09 to 06.11.09 Monday to Friday	Workshop on "Transfer Pricing" <b>Details refer Page. No. 10</b> <i>Delegate Fee: Rs. 1000/-</i>	Branch Premises 4.00pm to 8.00pm	<b>No CPE Credit Due to Exam</b>
03.11.09 Tuesday	Drafting of replies & Grounds of appeal in Service Tax Litigation <b>Mr. Anirudha R. J. Nayak</b>	Branch Premises 6.00pm to 8.00pm	<b>2 Hrs.</b>
24.11.2009 Tuesday	Mock appeal proceedings by <b>Practicing Chartered Accountants / Advocates</b>	Branch Premises 6.00pm to 8.00pm	<b>2 Hrs.</b>
26.11.09 Thursday	Taxation of Royalty & FTS - Recent Developments in International Taxation <b>CA. Vishnu Bhagri</b> <i>Delegate Fee: Rs 200/-</i>	Sri Bhagawan Mahaveer Jain College Auditorium Next to Bangalore Stock Exchange 5.00pm to 8.00pm	<b>3 Hrs.</b>
01.12.2009 Tuesday	Registration & Return under Service Tax <b>CA. Chandrasekar B D</b>	Branch Premises 6.00pm to 8.00pm	<b>2 Hrs.</b>
07.12.2009 to 11.12.2009 Monday to Friday	Workshop on " Aspects relating to Real Estate and Construction Industry" <b>For details refer : Back Inside Cover Page</b> <i>Delegate Fee: Rs. 1000/-</i>	Bangalore Premises 04.00 pm to 08.00 pm	<b>20 Hrs.</b>
08.12.09 Tuesday	Rebate & Refund under Service Tax <b>Mr. R. Dhakshinamurthy</b>	Branch Premises 6.00pm to 8.00pm	<b>2 Hrs.</b>
December '09 <b>Dates to be Announced Shortly</b>	"Workshop on FEMA/ Money Laundering Prevention Act" - 5 Days <b>Details refer Page. No. 10</b> <i>Delegate Fee: Rs. 1000/-</i>	Branch Premises 4.00pm to 8.00pm	<b>20 Hrs.</b>

**Note :High Tea for Programmes at Branch Premises at 5.30 pm.**

### Advertisement Tariff for the Branch Newsletter

Colour full page		Inside Black & White	
Outside back	<b>Rs. 20,000/-</b>	Full page	<b>Rs. 10,000/-</b>
Inside front	<b>Rs. 15,000/-</b>	Half page	<b>Rs. 6,000/-</b>
Inside back	<b>Rs. 15,000/-</b>	Quarter page	<b>Rs. 3,000/-</b>
<b>Advt. material should reach us before 22nd of previous month.</b>			

Sub Editors : **CA. S.N. Ravindranath**  
**CA. T.R. Venkatesh Babu**

The Branch does not accept any responsibility for the views expressed in Articles / Contributions / Advertisements published in this News Letter.



## TAX UPDATES SEPTEMBER 2009

Chythanya K.K., B.com, FCA, LL.B., Advocate

### VAT, CST, ENTRY TAX, PROFESSIONAL TAX

#### PARTS DIGESTED:

- a) 2009 14 KCTJ - Part 6
- b) 2009 (67) KLJ - Part 9
- c) 24 VST - Part 5 to 7
- d) 25 VST - Part 1

Reference / Description
<p><b>2009-10 (14) KCTJ 135 : Notification No. FD 13 CSL 2009 (K.G. Extraordinary/3 September 2009)</b> Vide the above notification, amendments have been made to the Karnataka Value Added Tax Rules, 2005 (hereinafter referred to as the said rules). <b>Amendment of Rule 33</b> - With reference to the keeping of accounts in a website (as notified by the Commissioner) by a registered dealer belonging to a class of dealers as may be notified by the Commissioner, the extent of information to be disclosed with reference to sales made, has been enlarged to include the disclosure of the sales made in the course of export out of the territory of India or in the course of inter-State trade or commerce or transfer of goods to any place outside the State other than by way of sale (previously the disclosure was only with reference to the sales made to other registered dealers). <b>Amendment of Rule 127</b> - With reference to the adjustment of the input tax with the output tax payable by a dealer, the condition (proviso) to allow the same has been amended to include that the details of the sales made in the course of export out of the territory of India or in the course of inter-State trade or commerce or transfer of goods to any place outside the State other than by way of sale to also be included at the time of disclosure in the website as aforesaid in Rule 33 Supra (this amendment is consequent to the amendment in Rule 33). <b>Amendment of Rule 128</b> - Similar to the amendment in Rule 127 in Rule 128 which deals with refund of excess tax paid, the refund would be allowed only in a case where the particulars of the purchase or sale (with the extended meaning as to include sales made in the course of export out of the territory of India or in the course of inter-State trade or commerce or transfer of goods to any place outside the State other than by way of sale) are disclosed in the website (this amendment is consequent to the amendment in Rule 33). <b>Amendment of rule 157</b> - With reference to the documents to be carried with the goods in transit in rule 157 of the said rules, after sub-rule(2), the following has been inserted, namely.- "(2-A) (a) The commissioner may notify a website from which the delivery note in Form VAT 505 shall be obtained, by the class of dealers among the registered dealers as he may specify, in the manner and subject to such conditions as may be specified therein in lieu of obtaining or issuing delivery note in Form VAT 505 or 515 in the manner specified in sub-rule(2) ; and (b) The class of dealers notified under clause (a) who were permitted to issue the delivery note in Form VAT 515 under clause (c) of sub-rule (1), shall cease to issue such delivery note in Form VAT 515 from the date of issue of notification under clause(a)".</p>
<p><b>2009-10 (14) KCTJ 147 : New Taj Mahal Café Pvt. Ltd. &amp; Ors. v. State of Karnataka &amp; Ors. (Karnataka-HC)</b> In deciding on the matter, the Hon'ble High Court of Karnataka held that the provision for an opportunity is a must with reference to whether there is justification for the levy of penalty (though not with regard to the aspect of either the rate of percentage of penalty or whether to levy or not). Further it was observed that the opportunity as indicated in the statutory provision, is not a mere formality but one which has to be ensured for compliance. The show cause notice for levy of penalty should clearly recite that there are ingredients such as the actual determination of the under statement of the liability by the dealer as is indicated in the concluded assessment order and it is only thereafter that such levy of penalty under section 72(2) of the Act can be taken up. Hence if a penalty is imposed even before going through these procedures and opportunities, the levy of penalty would be bad for want of not giving an opportunity and being in violation of section 72(2) of the Act itself.</p>
<p><b>2009 (67) Kar. L.J. (St) 34 : Notification No. KSA. CR. 248/08-09, dt. 28-8-2009</b> With reference to the option of self-printing of declarations in Form 'C' by every dealer specified under the notification no. KSA.CR.248/08-09, dated 21<sup>st</sup> March, 2009, the electronic approval of the Form 'C' declared would be issued by the concerned Local VAT Officer (LVO) or VAT Sub-Officer (VSO) within three working days from the date of request. Once the approval is so granted the dealer can have the seal of the Department of Commercial Taxes affixed by producing the said Form before the LVO or VSO concerned.</p>



**2009 (67) Kar. L.J. (St) 35: Notification No. KSA.CR.228/08-09, dated 7-5-2009** This notification provides that the dealers who are transporting the semi manufactured goods from their place of business to other place or vice versa within the BBMP limits for the purposes of job work like, machining, drilling, grinding, anodizing, powder coating and the like; repairing and weighing may not be insisted for carrying of delivery note in Form VAT 505 obtained electronically until an alternative mechanism is put in place. However, such dealers shall issue the self-printed delivery note form VAT 515 as specified under Notification No. KSA.CR. 327/2005-06, dt. 5-1-2006 for transportation of goods for the purposes specified above. The enforcement officers/check post authorities have been asked to insist for the production of documents for transportation goods as specified above.

**2009 (67) Kar. L.J. 161 : Overseas Limited, Bangalore v. State of Karnataka (Karnataka- HC-DB)** In the instant case the petitioner was a 100% export oriented unit engaged in exporting the iron ore from the place of extraction and processing to the other countries. In order to transport the iron ore, chassis was purchased and thereafter a body was built on it. With reference to a claim made by the petitioner for refund of the input tax on the items used to 'create' the truck/lorry on the ground that the investment made by the petitioner was for the purpose of its business of manufacturing and processing, the Hon'ble High Court of Karnataka concluded that in view of the definition of 'input' under Section 2(19) and the 'Input tax restriction' imposed under Section 11(a)(3) of the Karnataka VAT Act, 2003, the purchase of chassis by the petitioner was not for the purpose of manufacturing/processing of the goods but was only for transportation. Hence the input tax could not be refunded.

**2009 (67) Kar. L.J. 221 : Bangalore Club, Bangalore v. The ACCT, 24th Circle, Bangalore and another (Karnataka- HC-DB)** Pursuant to the amendment of the definition of the term "hotel" to include therein "club", for purpose of levy of luxury tax on charges for lodging accommodation provided in hotel to customers by way of business, it was observed by the Hon'ble Karnataka High Court that in the case of a club the element of business, viz., activities undertaken with profit motive, is lacking, that element is *sine qua non* for levy of luxury tax. Clubs which are not formed with profit motive, cannot be treated on par with hotels for purpose of levying luxury tax charges collected by clubs for accommodation provided in their premises to members exclusively. The amended provision along with its explanation, was struck down as bad in law, and demand notices were quashed. It was further observed by the Hon'ble Court that there was a limitation on the legislative power to introduce enactments or to amend enacted law with retrospective effect by the taxing statute. The said power could not be used to subvert judicial decision without removing statutory basis thereof. The amendment cannot create a new liability. Retrospectivity of amended provision does not authorize revenue reopen time-barred assessments. A statement made by the Court as to the consequence of treating the hotels and clubs on par was as follows – "*Treating the unequals equally amounts to discrimination, which is in violation of Article 14 of the Constitution of India.*"

**2009 (67) Kar. L.J. 236 : Granite Industries, Bangalore v. State of Karnataka and another (Karnataka- HC-DB)** In the matter of furnishing copies of certain documents, the Hon'ble High Court of Karnataka stated that carrying xerox copies of prescribed documents is not sufficient compliance with requirement, as what is prescribed by law is original copy. Xerox copies can never substitute original ones. Hence if the dealer were to take risk in the matter of compliance with law, consequence in law would follow. The order to levy penalty was held to be legal and valid.

## INCOME TAX

- |                             |                          |                          |
|-----------------------------|--------------------------|--------------------------|
| a) 315 ITR – Part 5         | f) 119 ITD – Part 9      | j) 27 CAPJ – Part 5 to 6 |
| b) 316 ITR                  | g) 120 ITD – Part 1 to 4 | k) 41-A BCAJ – Part 6    |
| c) 317 ITR – Part 1 to 2    | h) 124 TTJ – Part 3 to 7 | l) 41-B BCAJ – Part 1    |
| d) 182 Taxman – Part 5      | i) 125 TTJ – Part 1      |                          |
| e) 183 Taxman – Part 1 to 3 | m) 58 TCA – Part 3 & 4   |                          |

### Reference / Descriptio

**[2009] 316 ITR 1 : Moser Baer India Ltd. and others v. ADDL.CIT and Another (Delhi-HC)** It was held by the Hon'ble Delhi High Court as follows: (i) *The provisions of sub section (3) of section 92CA casts an obligation on the Transfer Pricing Officer to afford a personal hearing to the assessee before he proceeds to pass an order of determining of the arm's length price in terms of sub-section (3) of section 92CA.* (ii) *Since such a requirement flows from a plain reading of provisions of sub-section (3) of section 92CA, the determination of arm's length price by the Transfer Pricing Officer cannot be sustained by taking recourse to the fact that the assessee did not demand an oral hearing.* (iii) *To obviate any difficulties in future the show-*



cause notice issued by the Transfer Pricing Officer just prior to the determination of arm's length price under section 92CA(3) should refer to the documents or material available with the Assessing Officer in relation to the international transaction in issue. The show-cause notice should also give an option to the assessee :**(a)** both to, inspect the material available with the Assessing Officer as also the leeway to file further material or evidence if he so desires, and **(b)** to seek a personal hearing in the matter.

**[2009] 316 ITR 141 : CIT v. Anand Prakash (Delhi-HC)**With reference to the acquisition of land and the interest received by the assessee due to the delay in paying the compensation by the Government, the Hon'ble Delhi High Court felt that the levy of interest under section 234B of the Income tax Act, 1961 could not be made for the short fall in the advance tax paid by the assessee as a result of the receipt of the said interest, since interest under section 234B was compensatory in nature. In the instant case Government's money was not withheld by assessee. In fact, assessee was unaware of interest to be received on account of enhanced compensation at time of assessment, the payment of the compensation was delayed by the Government and hence no loss was suffered by the revenue. Therefore there was no question of levy of interest under section 234B of the Act.

**[2009] 316 ITR 445 : Dey's Medical (U.P.) P. LTD. v. Union Of India and others (Allahabad-HC)**In the above case, the Hon. High Court has upheld the constitutional validity of section 40(a)(ia) of the Act, holding as follows; *Moreover, despite our repeated query, the learned counsel for the petitioner could not show as to how and in what manner he claims section 40(a)(ia) of the Act to be ultra vires. He could not show any legislative incompetence in enacting such provision. Vires of a statute can be challenged on the ground of legislative incompetence. We are not shown that section 40(a)(ia) of the Act is not within the legislative competence of Parliament and further learned counsel for the petitioner also could not show that the said provision, in any manner, is violative of any provision of the Constitution including the fundamental rights.*

**[2009] 316 ITR (A.T.) 92 : Ziaulla Sheriff v. Asst. CIT (Bangalore-ITAT)**In the case where the assessee filed the return in status of a Non-resident and the Assistant Commissioner (International Taxation) exercising jurisdiction having found that the assessee was in fact a resident, the Tribunal noted that the assessment order was liable to be quashed. The proper remedy would be to transfer the file of the assessee to the officer who has jurisdiction over him.

**[2009] 317 ITR 27 : Prime Securities Ltd. v. Varinder Mehta, Asst. CIT and another (Bombay-HC)**With reference to the remedying of a defect in the return, due to the same being signed by person not mentioned under section 140, the Bombay High Court stated that the defect due to such a reason in the return could be cured by virtue of section 139(9). Failure to sign by a proper person is a defect and the expression 'defect' needs to be understood as it is naturally understood. The Court stated: *"Even if the defect has the effect of treating the return as non est, the Legislature still has provided for curing such defects. If the defect is cured then the return becomes a valid return."*

**[2009] 317 ITR 36 : Asst. CIT v. Mahavir Prasad Verma (Chhattisgarh-HC)**It was held that the time limit for the appeal to the High Court could not be extended by the application of provisions of Limitation Act. It was so decided relying on the SC decision in the case of Hongo 315 ITR 449 SC

**[2009] 317 ITR 66 : Star Television News Ltd. v. Union of India and others (Bombay-HC)**The imposition of a cut-off date for Settlement Commission to complete proceedings is impossible to be complied with. Further in a case where there is a provision for abatement of the case where no order is passed by the said cut-off date there is likely to be discrimination among the applicants for factors not under their control. The automatic abatement of proceedings would prejudice the applicants in so far as the making availability of confidential information to the assessing authority. The Hon'ble Bombay High Court felt that the said provision was arbitrary and needs to be read down so that proceedings are treated as abated only where the failure is owing to reasons attributable to applicant. In case where there is no delay attributable to the applicant then the application needs to be proceeded as if not abated.

**[2009] 317 ITR 107 : Ms. Madhushree Gupta v. Union of India and another (Delhi-HC)**In the case of the imposition of penalty for concealment of income, the introduction of the deeming fiction under section 271B with retrospective effect (that the direction in assessment order to initiate penalty proceedings is to be deemed satisfaction of Assessing Officer) is valid; however such satisfaction must be discernible from the Assessment Order, which is only prima facie. Further the Delhi High Court noted that the retrospective operation given to the section is not violative of Article 14 of the Constitution of India. *It is interesting to note that the Hon. Delhi High Court read the above provision as making no difference in as much as the requirement of discernibility of prima facie satisfaction is required both pre and post 271B.*

**[2009] 317 ITR (A.T.) 61 : Gururaj Mahuli v. ITO (Bangalore-ITAT)**In a case pertaining to the reimbursement of medical expenses incurred for the medical treatment on account of an accident having occurred at the place of work and treating the said reimbursement as 'perquisite' under section 17(2) of the Act, it was held as follows: *"This is a case where*



*actions have been taken to save the life of an employee by the employer as a result of an accident which occurred at the place of work by the machinery in the factory endangering the life of the employee during the course of his employment. It is the fundamental duty of the employer to protect the employee in such eventualities. The employer in his earnest effort should do whatever possible to save the life of his employee and to compensate the loss. It is also the moral and legal duty of the employer. Here the employer has performed his duty by admitting his employee in the nearest best available hospital and reimbursed the medical expenses. The obligation is on the part of the employer to meet such expenses. Further if the employer had not acted so, other than legal consequence, the morale of his entire employees will be demoralized, and may result in shut down of the factory. As assumed by the learned Assessing Officer, the employee, i.e., the assessee has not obtained any benefit by this transaction. The entire episode has resulted in loss of his limbs, pain and agony, and uncertain future for his entire family. The amount received by the employee was neither a benefit nor an obligation met by the employer on behalf of the employee as envisaged in the Act."*

**[2009] 317 ITR (A.T.) 65 : Subharam Trust v. DIT (Exemptions) (Bangalore-ITAT)**In the instant case since the trust was finding it difficult to administer and to look after the day to day activities of a kalyana mantapa the same was leased. With reference to determining whether the leasing of a kalyana mantapa is outside the purview of charitable activity or not, it was observed by the Tribunal that the activity of leasing itself shows that the convention centre, i.e., kalyana mantapa was constructed for the purpose of carrying out a business activity. Though it has not been given on a long lease (only for 36 months) the same is renewable for a further period on mutually agreed terms and conditions. Such an activity of giving the convention centre on lease is part of the nature of activity in the form of trade or commerce.

**[2009] 317 ITR (St.) 6 : Unilateral writing off of bad debt, sufficient after change of law**Their Lordships S.H. Kapadia and Aftab Alam JJ. dismissed the Department's special leave petition against the judgment dated August 28, 2008 of the Bombay High Court in I.T.A. Nos. 383 and 437 of 2008, whereby the High Court dismissed the Department's appeal its earlier order dated 12-3-2008 passed in I.T.A. No. 11 of 2007 holding that when a debt is written off in the books as bad debt, it is in compliance with the requirement of the provisions of section 36(1)(vii) as amended from April 1, 1989 : CIT v. Nelco Ltd.: S.L.P. (C) Nos. 16373-16374 of 2009.

**[2009] 317 ITR (NB) 8 : No depreciation allowable on the value of bourse membership card**In a judgment that could have a bearing on the tax outgo of many stock brokers, the Bombay High Court has ruled that depreciation cannot be claimed on stock exchange membership cards, while calculating tax liabilities.[Source: www.economicstimes.com dt. September 12, 2009]

**[2009] 317 ITR 218 : Liberty India v. CIT (SC)**With reference to section 80-IB and the determination whether DEPB/Duty Drawback benefits form part of the net profit or not, the Hon'ble Supreme Court has ruled that DEPB/Duty drawback are incentives which flow from the schemes framed by the Central Government or from section 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business under section 80-IB. They belong to the category of ancillary profits of such undertakings.

**[2009] 317 ITR (A.T.) 176 : ACIT v. Idea Cellular Ltd. (Hyderabad-ITAT)**With reference to the classification of an amount either as commission or brokerage and the consequent need to deduct tax at source, it has been observed by the Tribunal that the definition of the expression "commission or brokerage" contained in clause (i) of the Explanation to Section 194H is not so wide that it would include any payment receivable, directly or indirectly for services in the course of buying or selling of goods. To fall within the Explanation, there must be an element of agency in the case of all services or transactions contemplated by Explanation (i) to section 194H of the Act. For application of the provisions of section 194H of the Act there should be in existence the relationship of principal and agent in order to bring the discount in the ambit of commission or brokerage. Hence discount allowed on transactions resulting in outright purchases cannot be treated as brokerage or commission.

**[2009] 183 Taxman 251 : CIT-III v. Shambu Mercantile Ltd. (Delhi-HC)**In this case the assessee company was engaged in the business of sale/purchase and trade in stocks/units and units of mutual funds. With reference to the provisions of section 94 of the Act, it was held that the conditions prescribed in clauses (a) to (c) of sub-section (7) of section 94 (dividend stripping) are cumulative in nature. Therefore, it is only when transaction of purchase and sale is in relation to a security or a unit in respect of which dividend or income received is exempt and it is within statutory period of three months, as prescribed in clauses (a) and (b) of section 94(7), that loss, if any, would stand disallowed to extent of dividend.

**[2009] 183 Taxman 291 : CIT v. Yamaha Motor India (P) Ltd. (Delhi-HC)**With reference to the allowability of depreciation on discarded machinery it was observed that the actual use of machinery is not required with respect to discarded machinery. The condition for eligibility for depreciation under section 32 is that the machinery has been used for purpose of business, and the same could mean that discarded machinery has been used for purpose of business in earlier years for which depreciation has been allowed. It was further observed by the Delhi High Court that, in such a case depreciation is to be computed after



reducing scrap value of assets which have been discarded and written off in books of account for year under consideration from written down value of block of assets.

**[2009] 120 ITD 233 : Punjab Poly Jute Corpn. v. Asst.CIT, Cir-1, Bhatinda (Amritsar-ITAT)**In the instant case the assessee had sold certain land in assessment year under consideration. It had got the property registered at Rs. 220 per sq. yard for a consideration of Rs. 16.34 lakhs. However the Assessing Officer opined that value applicable to the said land as per Punjab State Rules was at Rs. 500 per sq. Yard. Accordingly, he invoked the provisions of section 50C and referred the matter to the DVO who valued it at Rs. 72 lakhs. After taking the indexed cost of acquisition of land at Rs. 9.60 lakhs, the capital gains was determined at Rs. 62.40 lakhs. It was observed by the Amritsar Tribunal that purpose of section 50C is that property which is under transfer from assessee to another person should have been assessed at higher value for stamp valuation purpose than that received by assessee. Since, in instant case, stamp valuation authority had accepted consideration declared by assessee in sale deed, there was no question of once again referring matter to DVO.

**[2009] 120 ITD 259 : National Fertilizers Ltd. v. DCIT, Circle 13 (1), New Delhi (Delhi-ITAT)**In this case, the assessee company was engaged in the manufacture of fertilizers. It had entered into an agreement with a foreign supplier, for import of urea. In terms of the said agreement the assessee had made advance payments. But the foreign supplier did not ship the goods and hence the agreement was terminated. The assessee had applied before the competent Court of Monaco as well as the Court in Hyderabad for execution of an award. It was held that since award was not made a rule of Court either at Monaco or Hyderabad in relevant assessment year, no enforceable right could be said to have vested in assessee in that year, which could lead to conclusion that interest income and litigation charges accrued to assessee. Further, during the previous year, relevant to assessment year in question, assessee changed its accounting policy in respect of writing off of loose tools from a period of three years to one year and in this regard explained to Assessing Officer that change was made in view of AS-2, effective from 1-4-1999, which was mandatory. The Assessing Officer held that loose tools are part of machinery under section 32 and, therefore, should have been written off at rate of 25 per cent on written down value. The Assessing Officer, therefore, recomputed depreciation and made certain addition to income of assessee. Further the Commissioner (Appeals) held that loose tools are not items going directly in production process, rather they are used for repair of all kinds of plant and machinery, electrical installation and other infrastructure in factory premises, i.e., are used only in connection with items of fixed assets and, therefore, they could not be treated as part of inventory. ***It was held that the loose tools were to be treated as per AS-10, Accounting Standard for fixed assets, and therefore, change made by assessee as per AS-2 was not proper. Under AS-10, asset has to be written off over its useful life. Since assessee earlier had considered useful life of tools to be three years and nothing was shown to Tribunal as to how useful life of loose tools became one year, the Tribunal held that the Commissioner (Appeals) was justified in upholding order of Assessing Officer.***

**[2009] 124 TTJ 960 : Bomi S. Billimoria v. ACIT (Mumbai-ITAT)**With reference to section 48, it was observed by the Mumbai Tribunal that since as per the terms and conditions laid down by RBI, there was no payment made by the assessee for acquiring shares under ESOP, there was no cost of acquisition to the assessee. Even if it was assumed that the market value of shares is the benefit given to the assessee, such benefit accrued to the assessee on the date of exercise of option. The date of exercise of option and the date of sale being the same, there is no difference between the deemed cost of acquisition and the actual price realized by the assessee. Therefore, no amount is chargeable to tax as capital gains.

**[2009] 124 TTJ 965 : ITO v. Lukas Fole (Pune-ITAT)**In this case the it was held that the social security contribution deducted from the salary of Czech national in accordance with the domestic law of Czech Republic is deductible from his salary as the income is diverted as source. The case of Gallotti Raoul v. ACIT [1997] 61 ITD 453 (Bom) was followed. During the analysis of the case it was noted that the deduction on account of hypothetical tax liability is made under tax equalization policy, which, in substance, restricts the tax liability of an employee in India to the tax liability which the employee would have incurred in home country. For example, in case tax rate in the home country works out to 20 per cent of salary income, and the assessee has to pay 30 per cent of salary as tax in India, the assessee will be liable to pay only 20 per cent of salary as tax and the balance 10 per cent will be borne by the employer. This example shows that what is deducted on account of hypothetical-tax is not a reduction of basic salary, but it is only restricting the tax liability of the employee as borne by the employer. The hypothetical-tax liability thus only reduces the tax perquisite of the employee and not his income. This aspect of the matter will be relevant in computation of perquisites when the same are to be computed with reference to the salary of the employee. The deduction, therefore, should be made at the stage of computing the tax perquisite and not the basic salary. Hence, in principle, however, hypothetical-tax is to be reduced from the tax perquisite to the employees and not from the basic salary.

**[2009] 124 TTJ 970 : Mythri Transport Corporation v. ACIT (Visakhapatnam-ITAT)**Assessee, a transport contractor, entered into an agreement with some parties whereby the assessee undertook to transport bitumen to various points as per their directions. Since it did not have required number of lorries, it had to hire lorries from others who placed the vehicles at the disposal of the assessee. As per the provisions of s. 194C(2) of the Act, the sub-contractor should carry out the whole or any





part of the work order. In the instant case of the assessee, the various clauses in the work order suggested that the assessee was solely responsible for all the acts and defaults committed by the assessee and/or its employees. It was not established by the Revenue that other lorry owners from whom the vehicles were hired have also been fastened with any such liability. Further, there was no material to suggest that the other lorry owners involved themselves in carrying out any part of the work undertaken by the assessee by spending their time and energy and by undertaking the risks associated with the main contract work. Hence, payments made for hiring of vehicles did not fall in the category of payments towards sub-contracts. Therefore, assessee was not liable to deduct tax at source as per the provisions of s. 194(C)(2) from the payments made to the lorry owners and consequently provisions of s. 40(1)(ia) were not applicable to such payments.

**[2009] 125 TTJ 1 : ACIT vs. T.N. Gopal (Chennai-TM-ITAT)** In the instant case the assessee was the joint owner of the house property along with his brother on the date of transfer and he utilized the long-term capital gain for construction of additional floor in the same house. The ITAT held that a mere extension of the existing building will not give benefit to the assessee under s. 54F of the Act.

**[2009] 125 TTJ 42 : Dr. (Mrs.) Sudha S. Trivedi vs. ITO (Mumbai-ITAT)** In the instant case the assessee with reference to the rectification under section 154 had originally filed appeal in time against the order of CIT (A) who rejected the said application. Thereafter the assessee filed an appeal against the original order of the CIT (A) as soon as she was advised by her counsel to do so, it was observed by the Mumbai Tribunal there was just and sufficient cause for not filing this appeal in time and therefore the delay was condoned. With reference to section 54EC it was observed by the Tribunal that the provision of the said section is an independent one not controlled by section 50. Section 50 is only with reference to the computation of capital gains prescribed in ss. 48 and 49 and the fiction under section 50 could not be extended beyond that for denying the benefit otherwise available to the assessee under s. 54EC if other requisite conditions are satisfied.

**[2009] 41-A BCAJ 732 & 2009 TIOL 511 : Mrs. Yogesh Aurora v. ITO (Bangalore – ITAT)** In this case with reference to the provisions of section 28, section 45 and section 56 of the Act, the Tribunal held that the amount of liquidated damages received by the assessee from the vendor of the property under an agreement for purchase of property constitutes a capital receipt not chargeable to tax.



#### Government Filing Due-date Calendar:

- Pre-populated Government Due Dates
- Automatically copies tax filing due dates to each client
- Allows you to enter your planned target dates for filing

#### Client Due-date Calendar:

- Pre-populated Applicable law list
- Maintains calendar for tax filing and other government due dates
- Also maintains due date calendar for project reviews, auditing, tribunals, etc

#### Statutory / Project filing obligations

- Helps you avoid missing filing due dates
- Creates automatic filing due date calendar
- Maintains Government as well as user specific due date calendar
- New applicable laws can be added at any time in a financial year

#### Resource Management

- Each user will have a user id and password
- Manager can assign and view his subordinates work
- Activities can be assigned/sub-assigned to managers/employees

#### Reports:

- Generates due date, pending activity and completed activity reports
- Reports are generated client-wise, user-wise, activity group-wise

#### Reminders:

- Send regular mails to all your clients
- Yellow background for days, reminds you of days falling on holidays

#### Security:

- Each user will have a login and password
- Allows/Restricts a user on screen viewing/updating/deleting

#### Reports and Reminders

- Can send reminder e-mails to clients in bulk
- Can view pending/current/future activities on one screen
- Powerful outstanding/completed activity reports are included
- Alerts on holidays are given when target/due dates are defined

#### MS-Excel Compatibility

- Look and feel of Microsoft Excel
- Import data from Microsoft Excel
- Download data/report to Microsoft Excel

For Further Details Contact: Raj:948160 7511 / Raghu:97426 66886 / Damu: 92422 34564 Email: [caclock@valltec.com](mailto:caclock@valltec.com)

Adv.



# Recent judicial pronouncements in Indirect Taxes

N.R. Badrinath, B. Com., Grad C.W.A., F.C.A., Madhur Harlalka, B. Com., F.C.A.

## CENTRAL EXCISE:

### Valuation:

1. The appellants entered into a contract for manufacturer of goods to their customers who supplied the drawings and designs free of cost while finalizing the proposal for purchase of goods. The Department alleged that the value of goods should be increased by 2% towards design and drawing charges and that duty should be recovered on such additional value. The Tribunal has held that the drawings and designs were supplied voluntary and there is no additional consideration flowing from the customers to the appellant. The cost of drawing and designs is beyond the scope of Section 4 of Central Excise Act, 1944. The drawings and designs chargeable includable in the assessable value, if incurred by the appellant. The price of the goods is the normal price negotiated in the course of wholesale trade. Therefore, it is the correct price at the time and place of removal from the factory. The additional amount of 2% for working out the duty liability is totally subjective and imaginary and has no legal basis. [*CCE, Pune Vs. Luna Agro Industries Private Limited, 2009(242) E.L.T. 130 (Tri.-Mumbai)*]

### SSI Exemption:

2. The appellant (Leo Engineering) is engaged in the manufacture of road construction equipments under the name of "Leo" and claiming SSI exemption. The name "Leo" is also used by another unit M/s. Leo Road Equipments Private Limited, the managing director of which is the proprietor of Leo Engineering. The appellant also informed department "Leo" is merely a common initial name word shared with another manufacturing unit and not a brand name. Department denied the SSI exemption on the ground that "Leo" is a brand name, which is belonging to M/s. Leo Road Equipment Private Limited. The Tribunal has held that department has not produced any evidence to establish that the "Leo" belonged to M/s. Leo Road Equipment Private Limited. Neither is there any claim by M/s. Leo Road Equipments Private Limited that brand name belonged to them. In such situation, the denial of benefit of them is not justified. [*Leo Engineering Vs. CCE, Ahmedabad, 2009 (241) E.L.T. 533 (Tri.-Ahmd.)*]

## MRP and Valuation:

3. The appellant is a manufacturer of Juicer, Mixture, Grinder (JMG) and Hand Blender. The appellant supplied hand blender as free gift along with JMG. The excise duty paid only on the value of JMG. Further, JMG package and hand blender also shows that hand blender is given free when JMG is purchased. The MRP of JMG actually included the cost of hand blender. The Tribunal held that hand blender not being sold separately is not includable in the value for levy of excise duty. Duty is payable on the basis of MRP on JMG and free gifts need not be included as part of consideration. Tribunal followed the decisions of Sony India Limited (2007(215) E.L.T. 327 (S.C.)) and also Calcutta Chemicals Co. Limited (2008(229) E.L.T.117 (Tri.-Kolkata)). [*Gujtron Electronics Private Limited Vs. CCE&Cu, Daman, Vapi 2009 (241) E.L.T. 371 (Tri.-Ahmd.)*].

## Physician Samples - Test of marketability:

4. Sale of physician samples is banned under the Drugs Act. It is held that this restriction would not carry any weight inasmuch as the prohibition of sale of goods would not mean that the product is not capable of being sold. [*M/s Medley Pharmaceuticals Ltd Vs CCE, Daman, 2009-TIOL-1539-CESTAT-AHM*]

## CENVAT CREDIT:

### Transfer of CENVAT Credit:

5. CENVAT credit transfer from one factory to another factory is allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with factory or business to new site or ownership and inputs or capital goods, on which CENVAT credit has been availed of are duly accounted for to the satisfaction of Deputy Commissioner in terms of Rule 10 of CENVAT Credit Rules, 2004. In the present case, the appellant has requested for transfer of CENVAT credit from one factory to another due to shifting of factory. However, inputs were not available since the same were already put to use. CENVAT credit transfer from one factory to another factory was denied on the ground that inputs are not available for transfer from one factory to another factory. Tribunal has held denial of CENVAT credit transfer is extraneous to statutory provision of Rule 10 of CENVAT Credit Rules, 2004 and



that the transfer is allowable. High Court upheld that Tribunal's finding in accordance with statute. [CCE, Pondicherry Vs CESTAT, 2009-TIOL-518-HC-MAD-CX]

### Excisable and exempted goods:

6. In case where separate accounts are not maintained for availment of CENVAT credit on inputs, which are used in manufacture of excisable and exempted goods, the amount equivalent of 8% / 10% is payable under Rule 6(3)(b) of CENVAT Credit Rules, 2002 and 2004. Tribunal has held that payment of 8% or 10% is not required when CENVAT credit on inputs used in exempted goods is paid/reversed. Tribunal followed the Larger Bench decision in Nicholas Piramal (2008-TIOL-1877-CESTAT-MUM-LB) and Gujarat High Court decision in Maize Products (2008-TIOL-596-HC-AHM-CX). [Analogics Tech India Ltd Vs CC & CCE, Hyderabad-I, 2009-TIOL-1562-CESTAT-BANG]

### Inputs:

7. The appellants used ceramic balls for refining or purifying of petrochemicals and also claimed CENVAT credit as inputs. CENVAT credit on ceramic balls was disallowed on the ground that the same does not participate in actual production process of refining or purifying. CENVAT is eligible if the inputs are used in or in relation to the manufacture. It was contended that inputs should be physically present in terms of Board Circular No. 33/33/94-CX dated.04.05.1994. The Tribunal upheld the order of Commissioner (Appeals) that CENVAT credit is eligible as input credit so long as they are used in or in relation to manufacture of final products. [CCE, Surat-I Vs M/s Reliance Industries Ltd, 2009-TIOL-1614-CESTAT-AHM]

### CUSTOMS:

#### Date for Determination of Export duty:

8. The proper officer passed order of clearance and export of goods under section 16 Customs Act, 1962. Export duty introduced thereafter does not apply and it cannot make null/void the earlier order. The fact that loading commenced after that order or loading was incomplete on date of introduction of duty found to be immaterial. [Kineta Minerals & Metaals Limited, 2009 (241) E.L.T. 416 (Tri.-Bang.)]

### SERVICE TAX:

#### Commercial Training or Coaching Service Vs Consulting Engineering Service

9. The appellants were providing computer software or computer training services. Department demanded service tax under the category "Consulting Engineering Services" by relying on board circular. F.No. B43/5/97-TRU. Dated. 02-07-1997 for the period 1999-2003. The said

circular clarified that scope of services of a "Consulting Engineering Services" includes manpower planning and training. The Tribunal has held that statutory definition of "Consulting Engineer Service" was not properly applied in impugned order and CBE&C circular merely reproduced a portion of the definition of manpower planning and training. The facts on record were completely ignored. Service rendered by the appellants was covered under "Commercial Training or Coaching Services" introduced with effect from 1-7-2003. The same activity cannot be taxed under any other category, more so in the category of "Consulting Engineering Services". [Micro Academy (India) Private Limited Vs. CST, Bangalore, 2009 (16) S.T.R. 28 (Tri.-Bang.)]

#### Outdoor Catering Services:

10. In the present case, the appellant was engaged in preparing and serving food in the premises of the company. As per the agreement, all facilities including space for canteen, kitchen stores, sleeping room, lunch room, table stools and other furniture, electricity, and gas were provided by company. The appellant's job was to prepare food in the premises of company and supply to company employees during the specified hours at rates specified by the Company. Department demanded service tax on above services under the category of "Outdoor Catering Services". Tribunal has held that appellants were engaged merely in preparation and serving the food items at the Company premises. The activities undertaken by the appellant cannot be held to fall under the category of "Outdoor Catering Services". [Rajeev Kumar Gupta Vs. CCE, Jaipur, 2009(16) S.T.R. 26 (Tri.-Del.)]

#### Repair & Maintenance Service

11. In the present case, the appellant entered into an agreement for operation and maintenance of captive power plant. The service tax was levied on the gross amounts comprising of both, operation and maintenance though the amounts are charged separately in the invoice, viz., separately for each - operation and maintenance. The appellant claims CENVAT credit on various services like mobile, coal unloading, GTA, advertisement, vehicle rent, equipment rent, group insurance and security. The Department disallowed the CENVAT credit partly on the plea that some of the services were availed only for the operation of the plant, which is not a taxable service. Tribunal has held the entire services including operations and maintenance services as a composite service under repair and maintenance and charged service tax on the gross sum paid. Therefore, the services cannot be split up for allowing CENVAT credit. [M/s Korea Plant Service & Engineering CO LTD Vs CCE & ST, Jaipur-I, 2009-TIOL-1563-CESTAT-DEL]



## “Workshop on Transfer Pricing ”

Jointly organized with KSCAA - No CPE

Date	Topic	Speaker
Day 1 02.11.2009 Monday	Introduction to Transfer Pricing	Mr. Vinay Nichani
	Transfer Pricing- International Regulations (OECD/USIRS/Other countries- An overview)	Mr. K. R. Sekar
Day 2 03.11.2009 Tuesday	CUP Method- Overview and Practical Issues	Ms. Karishma & Ms. Fhatima
	RPM Method- Overview and Practical Issues	Mr. Pramod Kumar S.
Day 3 04.11.2009 Wednesday	Profit Split Method- Overview and Practical Issues	Mr. Hardev Singh
	Transaction Net Margin Method- Overview and Practical Issues	Mr. Suchint Majmudar
Day 4 05.11.2009 Thursday	Transfer Pricing- Industry Issues (IT/Phrama/Distribution)	Yet to be Confirmed
	Transfer Pricing- Safe Harbour and APA, International Practise & Experience	Ms. Priya Gopalakrishnan
Day 5 06.11.2009 Friday	Transfer Pricing- Customs and TP - Compatability	Mr. S. Ramasubramanian
	Brain Trust Session International Practise & Experience	Mr. K. R. Sekar, Mr. Shanto Ghosh

**2<sup>nd</sup> to 6<sup>th</sup> November 2009**

**Venue : Branch Premises**

**Timing: 4.00pm to 8.00pm**

**Delegate Fee: Rs. 1000/-**

**Co-Ordinator: CA. K.R. Sekar**

*Cheque/DD to be drawn in favour of*  
**“Bangalore Branch of SIRC of ICAI”**

*For Further Details contact the Branch on*  
**Tel: 30563500/512/513**  
**Email: bangalore@icai.org**  
**blrregistrations@icai.org**  
**Website: icai-bangalore.org**

## XVII Batch of Course in Corporate in Accounting, Finance & Business Laws

**Duration:**

**November 2009 to March 2010 (78 Sessions)**

**Timings: 8.30am to 1.30pm (only on Saturdays)**

**Course Fee: Rs. 20000/-**

**Course Contents:**

- Corporate Finance
- Strategic Cost Management
- Financial Reporting and Analysis
- Financial Services
- Concepts and Practice of Automated Information Systems
- Corporate Bussiness Laws

**For Whom:** The course is open for members of Institute and non Members who are currently working in the field of Finance. Applicants for this course should have at least 2 years experience in the finance function. Knowledge of accounting terms, principles and procedures are essential as the course will cover areas that are comparatively advanced in nature.

We request you to pass on this information to your Clients / Finance Executives to avail the benefits of this COURSE.

## “Workshop on FEMA/ Money Laundering Prevention Act”

**December 2009 - 5 Days - Dates to be announced shortly**

**Venue : Branch Premises      Timing: 4.00pm to 8.00pm      Delegate Fee: Rs. 1000/-**

**Co-Ordinator: CA. K.S. Ravishankar**

*Cheque/DD to be drawn in favour of “Bangalore Branch of SIRC of ICAI”*

*For Further Details contact the Branch on*

**Tel: 30563500/512/513 Email: bangalore@icai.org / blrregistrations@icai.org Website: icai-bangalore.org**





## SERVICE TAX – SERIES – PART – IV

# Classification of service

By **CA Rajesh Kumar T R**, B Com, LLb, FCA & DISA & **CA Chandra Shekar B D**, B Com. LLb, FCA, DISA

Classification of service plays an important role in ensure legal compliance. There are lots of challenges with regard to classification as the classification of service is not as easy as classification of goods. The rules for classification of goods may not be applicable to the services directly, the trigger with regard to goods could be different as compared to that of the services. Sometimes for the layman it would be difficult to interpret the rules as required by the department. Hence classification has to be done with a professional touch to avoid a number of issues viz.,

- There could be a situation wherein service tax is collected and paid when there was no necessity.
- There could be a reduction in business due to increase in costs to the customers.
- Sometimes there is a possibility wherein an exemption notification is claimed but should have not claimed the exemption leads to a situation which leads to levy of interest and penalty.
- In case of all inclusive contracts and where tax is paid where there is no necessity then this reduces the profit margin and may not be able to compete in the market.
- There is a possibility wherein the service is classified under a category which is performance based whereas it falls under a recipient based service under the Export of service rules. Then there could arise a situation where in the condition of export of service is not fulfilled and need to collect and pay service tax.

The service provider has to classify the services properly to ascertain the liability properly under the Act. The various types of services on which service tax is payable are specified in various sub-clauses of section 65(105) of Finance Act, 1994. There is a possibility that a service may appear to be classifiable under more than one headings. The taxable service needs to specifically fall under a heading under which the service being rendered/provided can be termed as 'classification'.

Normally when we start the process of classification, this has to be done as per the principals of classification that is being laid down in terms specified under Section 65A(1).

Firstly the classification has to be made in accordance with the sub-clauses of Section 65(105). For doing so, we have to go through and analyse each of the sub clauses of Section 65(105) and if the activity can be classified under only one sub-clause the classification should be made accordingly.

Secondly if the activity undertaken seems to fall under more than one sub clauses of Section 65(105) then the same needs to be classified as per the rules mentioned below:

- The sub-clause which provides most specific description should be preferred over sub-clauses providing a more general description [Section 65A(2)(a)]. This principal was upheld in the Punjab and Harayana High Court in the case of Dr Lalpath Lab (P) Ltd Vs CCE Ludhiana 2007 (08) STR 337 (HC-P&H).

There is a similar provision in excise law which also states that specific description preferable over general heading and this was confirmed in Union of India and another Vs Raj's Continental Exports Private Limited 1987 (27) E.L.T. 256 (Mad).

- Classification should be as per essential character in case of composite services. Composite services are those consisting of combination of different services. In case of such services, if the service cannot be classified on the basis of specific description as per section 65A(2)(a) above, it shall be classified as if they consisted of a service which gives them their essential character [section 65A(2)(b)].
- Service which appears earlier in list, if service cannot be classified on above basis. If a service cannot be classified on basis of above provisions, the service should be classified under sub-clause which occurs first among the sub-clauses which equally merit consideration [section 65A(2)(c)]. If we compare similar provisions to excise law – there the law states that 'if two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred'. But the service tax law it states that the classification under sub-clause which occurs first as one of the reasons could be the earlier entries where introduced earlier the assesses could collect from an earlier period.

One has to first identify as to which category the service shall be classified and then go to the history of the said category to see

- From when the service was introduced
- Whether was there any amendment
- Whether there was any clarification
- Whether there was any new category which was introduced later.



As per rule 4A(1) of Service Tax Rules, the invoice should indicate description and classification of service.

**Service which has been specifically excluded in definition of one service cannot be covered under another head** - In *Dr. Lalpath Lab (P) Ltd. v. CCE* (2006) 5 STT 171 (CESTAT), it was held when there is a specific entry for an item in the tax code, same cannot be taxed under any other entry. If a service has been specifically excluded from definition of one service, it cannot be covered under another taxable service.

**Introduction of new heading means earlier it was not taxable** - In *Glaxo Smithkline Pharmaceuticals v. CCE* (2005) 1 STT 37 (CESTAT), it has been held that when an existing tariff definition remains same, introduction of new tariff entry would imply that the coverage under new Tariff was not covered by the earlier entry. When new category is introduced, it means that the service was not taxable under old category.

**Service should be mainly or principally a taxable service** - A composite contract cannot be vivisected and service portion cannot be subjected to tax – *Widia GMBH v. CCE* (2006) 5 STT 414 (CESTAT), *Blue Star v. CCE* (2007) 7 STT 68 (CESTAT). In *Daelim Industrial Co. v. CCE* 2003 STT 438, 7 STT 184

(CEGAT), it was held that a works contract cannot be vivisected and part of it subjected to tax.

### Case Study

XYZ Bank is offering services of Cash management service for the period 1-1-2005 to 31-3-2007. Department contends that the same should be classified under the heading Business Auxiliary Services and raises a demand for the same.

Bank takes a stand that Cash Management Services would have be classified under the category 'Banking and other financial services' with effect from June 2007. The period involved in this case is 1-7-2003 to 31-3-2005. Bank states that during this period the Cash Management Service is specifically excluded. When the service is excluded from the scope of Banking and other financial services, the intention of the Government is not to subject it to service tax at all.

The facts of the case are similar to the merits as seen in the case of Dr. Lalpath Labs and we can note that '**Service which has been specifically excluded in definition of one service cannot be covered under another head.**'

In the light of practical situations we face, it is very important to classify the services under proper headings to avoid litigations, future tax liability, interest and penalties.



### Important Dates to remember during the month of November 2009

- 5-Nov-09 - Payment of Central Excise Duty for the month of October 2009.
- Payment of Service Tax for the month of October 2009. (in case of persons other than individuals, proprietor & partnership)
- 6-Nov-09 - e-Payment of Central Excise Duty / Service Tax for the month of October 2009.
- 7-Nov-09 - Payment of TDS Deducted & TCS collected, in the month of October 2009.
- 10-Nov-09 - Filing of monthly returns of Central Excise for the month of October 2009.
- 11-Nov-09 - Filing of half yearly returns of Employee State Insurance for the period Apr 09 to Sep 09
- 15-Nov-09 - Filing of VAT 120 under KVAT Laws for the month of October 2009.
- Payment of **Provident Fund** for the month of October 2009.
- 20-Nov-09 - Filing of VAT 100 under KVAT Laws for the month of October 2009.
- 21-Nov-09 - Payment of **Employee State Insurance** for the month of October 2009.
- 25-Nov-09 - Filing of Monthly returns of Provident Fund for the month of October 2009.

### *Congratulations*



**CA. Vinay Mruthyunjaya has been nominated to the Marketing Committee of the Board of Control for Cricket in India.**

**CA. Ashok Raghavan has been nominated to the Legal Committee of the Board of Control for Cricket in India.**



# Elections 2009

*Election for Twenty First Council and Twentieth Regional Councils*

*for the term 2010-2013 is scheduled on*

*Friday the 4th December, 2009 and*

*Saturday the 5th December 2009*

*The Committee earnestly requests*

*all the members to come*

*and franchise their invaluable vote.*



## Branch Elections 2009

*Branch is scheduled to hold the elections*

*for its Managing Committee for the term 2010-2013.*

*Details of the Elections will be published in the December 2009 Newsletter.*

### Workshop on

## "Aspects relating to Real Estate and Construction Industry"

Date	Topic
Day 1 07.12.2009 Monday	Accounting for Construction Contracts - AS 7 Recognition of revenue by Real Estate Developers - AS 9 Vs AS 7
Day 2 08.12.2009 Tuesday	Service Tax on -Construction of Complex -Commercial or Industrial Construction Service -Renting of Immovable Property
Day 3 09.12.2009 Wednesday	Joint Development Agreements - Documentation and Tax related issues Stamp Duty and Registration - Various issues
Day 4 10.12.2009 Thursday	Income from Capital Gains and Treatment of Immovable property as stock-in-trade Income from House Property vs Income from Business
Day 5 11.12.2009 Friday	Various issues relating to Works contract Panel discussion

**07<sup>th</sup> to 11<sup>th</sup> December 2009**

Venue : **Branch Premises**

Timing : **4.00 pm to 8.00 pm**

Delegate Fee : **Rs. 1000/-**



Fee can be paid through Cash / Cheque  
drawn in favor of

**"Bangalore Branch of SIRC of ICAI"**

Renowned & Expert faculty members will be  
conducting the sessions.

Co-ordinator: **CA. Ashok Raghavan**

*For Further Details contact the Branch on*

Tel: **30563500/512/513**

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Website: **icai-bangalore.org**

## Workshop on KVAT



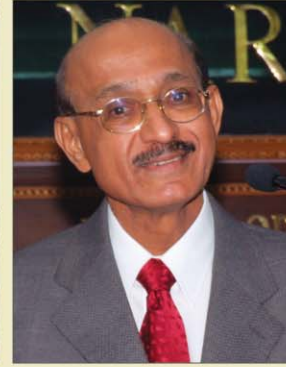
CA. S. Venkataramani



CA. H. Vishnumoorthi



CA. Naveen Rajpurojith



Mr. M.A. Maniyar



CA. K.K. Chythanya



Mr. D. Venkatesh



CA. S. Vishnumurthy



CA. Madhur Harialka



CA. S. Ramasubramanian



CA. Sanjay M. Dhariwal

## Speakers at Study Circle Meetings



CA. T.R. Rajesh Kumar



CA. Chidananda Urs



Mr. K. Sethuraman



Mr. K.S. Naveen Kumar



CA. H. Shiva Kumar



CA. C.R. Raghavendra



CA. N.R. Badrinath



CA. K. Subramanian



CA. N. Anand