



Bangalore Branch of SIRC e-Newsletter

English Monthly

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For Private Circulation only

Income Tax Department, Karnataka and Goa Region,
The Institute of Chartered Accountants of India,
Association of Indian Chambers of Commerce and Industry
Association of Karnataka Chambers of Commerce and Industry
Jointly organize address on



Happy
Independence Day



Chief Guests - **Shri R.V. Deshpande**, Hon'ble Minister for Large & Medium Industries & Tourism, Govt. of Karnataka, **Dr. N.R. Narayana Murthy**, Founder, Infosys Limited, and Guest of Honour - **CA. M. Devaraja Reddy**, President, ICAI inaugurated the Conference



Chairman's Communique . . .



Dear professional friends,

July month is always considered as busiest month for tax professionals as we CAs have to complete filing of Income Tax returns of clients. A new benchmark has also been set with 2.27 crore people filing online returns this year compared to 71 lakh in 2015-16. This indicates the tremendous development and acceptance of technology by the tax payers. Further, CBDT has released return forms well within time, which helped the assesseees in timely filing the returns. We being partner in nation building, our effort to create tax awareness and build confidence among tax payers to contribute to India's growth trajectory, is indispensable.

The month of July

Chartered Accountants' day was celebrated in a most befitting manner on 1st July 2016. To commemorate the day, CA D L Suresh Babu, Former Central Council Member, the chief guest along with our committee members hoisted our institute flag.

Apart from regular study circle meetings and Tax clinics, Karnataka State Level Conference Jnana Pragathi - Seek Knowledge, Gain Progress along with the other 7 branches in Karnataka, conducted on 16th & 17th July 2016, was a resounding success with the unstinted support of our members. In fact registration was closed by 20th of June itself. This shows the interest of our members to update in the area of our service to maintain the credibility of our esteemed profession. Address by Chief guests Shri R.V.Deshpande, Hon'ble Minister for Large & Medium Industries, Tourism, Govt. of Karnataka and Dr. N. R. Narayana Murthy, Founder-Infosys Limited will go a long way in our professional career and their august presence amidst us itself made our conference ever memorable. The sessions conducted by our eminent speakers were highly educative and was a value addition to each one of us. The spiritual session by

Pujya Gnanvatsal Swamiji, New Delhi was remarkable. In fact his address in brief was how to lead a peaceful and stress free happy life, which is apt for the prevailing day to day working environment.

The cultural programme conducted on 16th evening was enchanting. The performance of the artists with regard to music and dance was beyond imagination.

The month of August

We all know that the Indian economy is buoyant about the implementation of GST in the month of April 2017. ICAI welcomes the passing of the much awaited 122nd Constitution Amendment (GST) Bill, 2014 by both the houses of parliament would pave the way for implementation of Goods and Services Tax in India. It is the most significant tax reform since Independence, which subsumes a variety of federal and state taxes. The Bill would now be required approval by State Assemblies.

- **GST** seeks to facilitate seamless transfer of goods and services across country and thereby creating a unified national market. It also seeks to reduce cascading effects of taxes and rationalize tax content in product price, enhance the ability of industry to compete globally. Prices of commonly used fast moving consumer products should reduce by at least 10%. This if passed on would benefit the ultimate consumer.
- The Government is expecting increased revenues due to broad basing the taxation base through increased voluntary compliance. The industry is also expectant that the improved GST (incorporating the suggestions of industry, trade and professional bodies will facilitate ease of doing business. In totality, GST would benefit India with increased FDI flows, increased revenue for the Government as a whole, Industry as well as the consumers in the long run thus creating a win-win situation for all.
- The implementation of GST is also expected to bring in new professional opportunities for Chartered Accountants to serve the community at large. Increased compliances requirement in the form of number of returns required, challenge in transition to the new regime etc. would definitely require a professional hand for adherence wherein Chartered Accountants can play a vital role. The provision for audit under section 42(4) of the said Model GST Law akin to tax audit is a landmark opportunity for professionals to prove themselves as care takers of the financial health of the country.
- We know that GST is the sought after topic of the day and our profession is regarded as the backbone of Indian

financial system. We should be able to abreast with the transitional process a of GST and hence we **Bangalore Branch is conducting programmes on 6th August and 13th Aug 2016 for the benefit of our members.**

- As many of our members are involved in the **Audit of Charitable Trusts, one day seminar on charitable trusts is being conducted on Friday 26th August 2016 at our Branch premises.** On behalf of Bangalore branch, let me place on record the initiative taken by **CA. Phalguna Kumar E, Chairman SIRC of ICAI** for the conduct of this seminar. We also thank the great speakers CA Kandasamy, Chennai & Dr. CA. N. Suresh for having agreed to be speakers to the said programme despite their busyschedule.

Dear friends, we request you to pass on this information to your clients- NPOs to have maximum participants to realise the objective of this seminar.

September being a busy month for members, we are conducting only very few study circle meetings & Tax clinics.

Friends, we are all aware that **15th Aug 2016 is our 70th Independence Day** and we are celebrating the same at

our branch. On this auspicious occasion, branch will be issuing scholarship to CA students on need cum merit basis. CA. I S. Prasad, Former Regional Council Member has voluntarily agreed to donate Rs. One Lakh for this noble cause. I convey my sincere thanks to him for his magnanimity.

We should pay homage to the martyrs who fought in the freedom struggle and saved our motherland from the British rulers. Let us take an oath that we should not misuse the freedom given to us under any circumstances to safeguard the interest of our profession. Let us all work with transparency and integrity for the betterment of our great nation.

It makes my heart beat with pride, to see the colours of Independence Day spreading happiness and great joys all around.

Happy Independence Day

With warm regards

Pampanna B E

CA. Pampanna B E
Chairman

IDS Programme



Speakers at Study Circle Meetings



CA. Sudheendra B R

CA. D R Krishna Prasad & CA. Raghavendra S

CA. Ganpatilal Kawad.H












CA. Narendra J Jain

CA Ramakrishna Sangu

CA. Ramachandran M



CALENDAR OF EVENTS - AUGUST 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
03.08.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Patents and Trade Mark Mr. H L Narendra Bhatta VENUE: Branch Premises	 2 hrs
05.08.2016 Friday 5.00pm to 8.00pm	Investor Awareness Programme Startup India, Make in India, Skill India & Digital India - Role of Professionals Chief Guest: Shri D V Prasad CA Gopal Krishna Raju , Chennai, Regional Council Member CA E Narasimhan VENUE: Branch Premises	  3 hrs
06.08.2016 Saturday 9.30am to 5.30pm	One Day Seminar on GST Delegate Fee: Rs.750/- VENUE: Branch Premises	6 hrs
10.08.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet HUF -Latest Tax Issues CA K L Prashanth VENUE: Branch Premises	 2 hrs
12.08.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Direct Taxes Foreign Tax Credit CA D S Vivek VENUE: Branch Premises	 2 hrs
13.08.2016 Saturday 10.00am to 5.45pm	One Day Seminar on GST Delegate Fee: Rs.750/- VENUE: Branch Premises	6 hrs
15.08.2016 Monday 9.30am onwards	Independence Day Celebration Chief Guest: CA I S Prasad Former Regional Council Member, SIRC of ICAI VENUE: Branch Premises	 —
17.08.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Critical Issues on Tax Audit CA. D R Venkatesh VENUE: Branch Premises	 2 hrs
20.08.2016 Saturday 5.00pm to 8.00pm	Intensive Workshop on International Taxation Article 28, 29 & 30: Members of Diplomatic Missions and Consular Posts, Entry into Force & Termination CA Amith Kumar Limitation of Benefits & Protocol CA. Vijay Jayaram & CA. Ramya S Nayak VENUE: Branch Premises	   3 hrs
24.08.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Latest Technology in Statutory Compliance and Trends in Labour Laws Mr. Anil Prem D Souza VENUE: Branch Premises	 2 hrs

CALENDAR OF EVENTS - AUGUST & SEPTEMBER 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
26.08.2016 Friday 9.45am to 5.30pm	One day Seminar on Charitable Trusts - Taxation Issues VENUE: Branch Premises <i>Details in page no. 8</i>	6 hrs
26.08.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Indirect Taxes Discussion on Recent Amendments and Important Case Laws in Indirect Taxes CA. S Ramasubramanian VENUE: Branch Premises	 2 hrs
27.08.2016 Saturday 5.00pm to 8.00pm	Clause by Clause Discussion on Form 3CD, 3CB & 3CA CA Naveen Khariwal G <i>Delegate Fees: Rs. 250/-</i> VENUE: Karnataka State Hockey Association, Rhenius Street, Langford Town, Bangalore- 560025	 3 hrs
31.08.2016 Wednesday 9.30am to 5.00pm	International Financial Reporting Standards (IFRS) Indian Accounting Standards (IND AS) – An Impact Seminar <i>Delegate Fees: Rs. 300/- Details in page no. 9</i> VENUE: St. Joseph's College of Commerce (Autonomous), Post Graduate Department, 163, Brigade Road, Bangalore - 560 025	—
31.08.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Refund, Reverse charges and Place of Provision of services CA. Madhur Harlalka VENUE: Branch Premises	 2 hrs
07.09.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Changing role of Internal Auditors CA. Abdul Majeed VENUE: Branch Premises	 2 hrs
09.09.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Direct Taxes Latest Case Laws - Analysis CA. Narendra J Jain VENUE: Branch Premises	 2 hrs
14.09.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Using Tally: Beyond Accounting to Assurance CA. A Rafeeq VENUE: Branch Premises	 2 hrs

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Advt. material should reach us before 22nd of previous month.

EDITOR :

CA. PAMPANNA B.E.

SUB EDITOR :

CA. SHRAVAN GUDUTHUR

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IMPORTANT DATES TO REMEMBER DURING THE MONTH OF AUGUST 2016

- CA. Venkatesh Babu T.R.

Due Date	Statute	Compliance
5 th August 2016	Excise	Monthly Payment of Excise duty for the month of July 2016
	Service Tax	Monthly/Quarterly Payment of Service tax for the month for July 2016
	Income Tax	Income Tax Returns for the F.Y 2015-16 (A.Y 2016-17) For Non-Corporate assesseees who are not liable for tax audit. (Due date Extended to 5th August 2016 vide order dated 29th July 2016)
6 th August 2016	Excise	Monthly E- Payment of Excise duty for the month of July 2016
	Service Tax	Monthly/Quarterly E- Payment of Service Tax for the month of July 2016
7 th August 2016	Income Tax	Deposit of Tax deducted / collected during July 2016.
10 th August 2016	Excise	Monthly Performance Reports by Units in EOU, STP, SEZ for July 2016.
15 th August 2016	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended July 2016 (for Composition Dealers).
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended July 2016.
	Provident Fund	Payment of EPF Contribution for July 2016 (No grace days).
		Return of Employees Qualifying to EPF during July 2016.
		Consolidated Statement of Dues and Remittances under EPF and EDLI For July 2016.
		Monthly Returns of Employees Joined the Organisation for July 2016.
		Monthly Returns of Employees left the Organisation for July 2016.
20 th August 2016	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During July 2016.
	Professional Tax	Monthly Returns and Payment of PT Deducted During July 2016.
21 st August 2016	ESI	Deposit of ESI Contribution and Collections of July 2016 to the credit of ESI Corporation.

IPCC AND FINAL PRE - EXAM CRASH COURSE FOR NOVEMBER 2016 EXAMS

**IPCC Pre-Exam Crash Courses for November 2016 Exams
will be conducted between 06.09.2016 and 30.09.2016**

and

**CA Final Pre- Exam Crash Courses for November 2016 Exams
will be conducted between 02.09.2016 and 29.09.2016**

For more details, visit website:

www.bangaloreicai.org

One Day Seminar on GST

Organised by **Indirect Tax Committee, ICAI**
Hosted by **Bangalore Branch of SIRC of ICAI**

On **Saturday, 13-08-2016**

Venue: **S.Narayanan Auditorium, ICAI Bhawan, Bangalore Branch**

Timings: **10.00am to 5.45pm**



Timings	Topics	Speakers
10.00am to 10.15am	INAUGURAL SESSION	
10.15am to 11.15am	Overview of Model GST Law including Concept of CGST, SGST & IGST	CA. Kalyan Kumar K
11.15am to 11.30am	Tea Break	
11.30am to 12.30pm	Levy & Composition, Exemption from Tax	CA. Kalyan Kumar K
12.30pm to 01.30pm	Meaning and Scope of Supply, Time of Supply of Goods & Services	CA. Dayananda K
01.30pm to 02.30pm	Lunch Break	
02.30pm to 04.00pm	Valuation of taxable Supply & Valuation Rules	CA. N. R. Badrinath
04.00pm to 04.15pm	Tea Break	
04.15pm to 05.45pm	Input Tax Credit Transitional Provision	CA. Vishnumurthy S
<p><i>Programme Chairman:</i> CA. Madhukar N. Hiregange, <i>Chairman, Indirect Tax Committee</i> Ph: +91 0120-3045954, e-mail: idtc@icai.in</p>		

CA. Pampanna B. E
Chairman
Bangalore Branch of SIRC of ICAI

CA. Shravan Guduthur
Secretary
Bangalore Branch of SIRC of ICAI

DELEGATE FEES FOR MEMBERS: ₹ 750/-

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For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3513 / 3500**
Email : **blrregistrations@icai.org** | Website : **www.bangaloreicai.org**



One Day Seminar on Charitable Trusts - Taxation Issues

On **Friday, 26-08-2016**

Venue: **S. Nararayanan Auditorium**, ICAI Bhawan, Bangalore Branch

Timings: **09.45am to 05.30pm**



Timings	Topics	Speakers
09.00am to 09.45am	Registration	
09.45am to 10.00am	INAUGURAL SESSION	
10.00am to 11.30am	Drafting & Promotion of NPOs	CA. Phalguna Kumar E <i>Chairman, SIRC of ICAI</i>
11.30am	Tea Break	
11.45am to 01.15pm	FCRA along with Lokpal and Lokayukta 2013 Act	CA Kandasami. M <i>Chennai</i>
01.15pm to 02.15pm	Lunch Break	
02.15pm to 03.45pm	Application, Accumulation, Assessment and Taxation (including changes made by Finance Act 2016)	Dr. CA Suresh N <i>Bangalore</i>
03.45pm	Tea Break	
04.00pm to 05.30pm	Application, Accumulation, Assessment and Taxation (including changes made by Finance Act 2016)	Dr. CA Suresh N <i>Bangalore</i>

CA. Pampanna B. E

Chairman

Bangalore Branch of SIRC of ICAI

CA. Shravan Guduthur

Secretary

Bangalore Branch of SIRC of ICAI

DELEGATE FEES FOR MEMBERS: ₹ 750/-

Non-MEMBERS: ₹ 1500/-

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For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3513 / 3500**

Email : **blrregistrations@icai.org** | Website : **www.bangaloreicai.org**

International Financial Reporting Standards (IFRS) Indian Accounting Standards (IND AS) – An Impact Seminar

Organised by **Bangalore Branch of SIRC of ICAI**
Jointly with **St. Joseph's College of Commerce (Autonomous)**
on Wednesday, 31st August 2016, Timings: 9.30am to 5.00pm

Timings	Topics	Speakers
09.30am	INAUGURAL SESSION <i>Presided by: Rev. Fr. Anthony Joseph, SJ., Vice President, BJES</i>	
	<i>Welcome address: Dr. Daniel Fernandes, SJ, Principal & CA. Pampanna, Chairman, Bangalore Branch of SIRC of ICAI</i>	
	<i>Chief Guest: CA. Gururaj Acharya, Practicing Chartered Accountant & Specialist in Corporate law</i>	
10.00am	Impact of IFRS/Ind AS on Presentation and Disclosure	<i>Key Note Address: CA. Gururaj Acharya</i>
11.30am	Tea Break	
11.45am	Impact of IFRS/Ind AS on Income and Expenditure	CA Vinayak Pai V <i>Consultant and Trainer - IFRS & US GAAP</i>
01.15pm	Lunch Break	
02.00pm	Impact of IFRS/Ind AS on Assets and Liabilities	CA Mohan R Lavi <i>Executive Director at Financial Reporting Data Analytics & Research Centre</i>
03.30pm	Impact of IFRS/Ind AS on Group Financial Reporting	CA Asha M <i>Manager (Accounting Advisory Services) at KPMG</i>
4.30pm	VALEDICTORY	

CA. Pampanna B. E
Chairman, Bangalore Branch

CA. Shravan Guduthur
Secretary, Bangalore Branch

Fees
₹ 300/-

Only Limited Seats Available, Register yourself by contacting the below -

St. Joseph's College of Commerce (Autonomous),

Post Graduate Department, 163, Brigade Road, Bangalore - 560 025

E-mail: pgdept@sjcc.edu.in / ifrsnationalseminar@gmail.com, Ph: 080-25360644 /46 ext. 272.

No
CPE



Southern India Chartered Accountancy Students Association Bangalore Branch of SIRC of ICAI

One Day Students Seminar on "TAX AUDIT"

On **Saturday, 27th August 2016**
Venue: **ICAI Bhavan, Bangalore Branch**
Timings: **9.00 am to 5.00 pm**

Timings	Particulars	Speakers
9.00am to 9.30am	Registration	
9.30 am to 10.00 am	INAUGURAL SESSION	Inaugural address by Chief Guest
10.00 am to 11.30 am	1ST TECHNICAL SESSION Discussion on Important Clauses of Form 3CD	CA Naveen Khariwal
11.30 am to 11.45 am	Tea Break	
11.45 am to 1.15 pm	2ND TECHNICAL SESSION Relevant Provisions of TDS & Disclosure requirements	CA Tarun Jain
1.15 pm to 2.15 pm	Lunch Break	
2.15 pm to 3.30 pm	3RD TECHNICAL SESSION Deduction of Business Exps & Disclosure requirements	CA Rani N R
3.30 pm to 3.45 pm	Tea Break	
3.45 pm to 5.00 pm	4TH TECHNICAL SESSION 269SS & 269T, Deductions from Gross Total Income, Set off Carry Forward of Losses & Disclosure requirements	CA Vinay Sanji

CA Raveendra S Kore
*Chairman, SICASA
Bangalore Branch*

Student Co-ordinators:

Mr. Sheelavanthaiah
+91 88844 41485

Ms. Apoorva
+91 81976 53097

Hurry up.....Limited Seats Available

REGISTRATION FEE : Rs. 200/-

Please Contact for Registration:

Ms. Divya Manoj, 080-3056 3511

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GST, ACCOUNTS AND AUDIT

CA Mohan R Lavi



Introduction

With the Constitutional Amendment on Goods and Service Tax (GST) being passed in the Rajya Sabha, it appears to be only a matter of time before GST makes an entry into Indian taxation laws. This article summarizes the provisions of the Model GST law relating to Accounts and Audit.

Accounts and other records

Clause 42 of the Model GST law states that every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf. Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned. The registered person may keep and maintain such accounts and other particulars in the electronic form in the manner as may be prescribed. The Commissioner/Chief Commissioner may notify a class of taxable persons

to maintain additional accounts or documents for such purpose as may be specified. Where the Commissioner/Chief Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed. Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts, the reconciliation statement under sub-section (2) of section 30 and other documents in the form and manner as may be prescribed in this behalf.

Period of retention of accounts

Clause 43 states that every registered taxable person required to keep and maintain books of accounts or other records under sub-section (1) of section 42 shall retain them until the expiry of sixty months from the last date of filing of Annual Return for the year pertaining to such accounts and records. A taxable person, who is a party to an appeal or revision or any other proceeding before

any Appellate Authority or Tribunal or Court, whether filed by him or by the department, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified under sub-section (1), whichever is later.

Audit by tax authorities

Clause 49 of the Law states that The Commissioner of CGST/Commissioner of SGST or any officer authorised by him, by way of a general or a specific order, may undertake audit of the business transactions of any taxable person for such period, at such frequency and in such manner as may be prescribed. The above tax authorities may conduct audit at the place of business of the taxable person and/or in their office. The taxable person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, prior to the conduct of audit in the manner prescribed. The audit shall be carried out in a transparent manner and completed within a period of three months from the date of commencement of audit. Where the Commissioner is satisfied that audit in respect of such taxable person cannot be completed within three months



from the date of commencement of audit, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months. Commencement of audit shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the taxable person or the actual institution of audit at the place of business, whichever is later. During the course of audit, the authorised officer may require the taxable person,

- (i) to afford him the necessary facility to verify the books of account or other documents as he may require and which may be available at such place,
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

On conclusion of audit, the proper officer shall without delay inform the taxable person, whose records are audited, of the findings, the taxable person's rights and obligations and the reasons for the findings. Where the audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit erroneously availed, the proper officer may initiate action as per other Sections of the law.

Special Audit

Clause 50 of the Model Law states that if at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of Deputy/Assistant Commissioner having regard to the nature and complexity of the case and the interest of

revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such taxable person by notice in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner in this behalf. The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Deputy/Assistant Commissioner mentioning therein such other particulars as may be specified. The proper officer may, on an application made to him in this behalf by the taxable person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by another ninety days. The provision of sub-section (1) shall have effect notwithstanding that the accounts of the taxable person have been audited under any other provision of this Act or any other law for the time being in force or otherwise. The taxable person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit that is proposed to be used in any proceedings under this Act or rules made thereunder. The expenses of, and incidental to, the examination and audit of records including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and that such determination shall be final. Where the special audit results in detection of tax

not paid or short paid or erroneously refunded, or input tax credit erroneously availed, the proper officer may initiate action under other provisions of the Model Law.

Summary

The Model GST Law provides opportunities for Chartered Accountants to do a normal audit just like the present Tax Audit. In addition, special audits can be done. In the GST era, the books of account can be kept as per the Accounting Standards that apply to the entity. It would be critical for every business to maintain additional information that support the information given in the books of account. To illustrate, Clause 12 of the Model GST law states that the timing of supply of goods shall be the earliest of the following dates:

- the date on which the goods are removed by the supplier for supply to the recipient, in a case where the goods are required to be removed or
- the date on which the goods are made available to the recipient, in a case where the goods are not required to be removed; or
- the date on which the supplier issues the invoice with respect to the supply; or
- date on which the supplier receives the payment with respect to the supply; or
- the date on which the recipient shows the receipt of the goods in his books of account. ■

SALIENT FEATURES OF MODEL GST LAW, 2016

CA. N.R. Badrinath, B.Com, Grad CWA, FCA & CA. Madhur Harlalka, B.Com, FCA, LL.B



The release of the Model Goods & Services Tax (GST) Law in the public domain on June 14, 2016 by the Empowered Committee of State Finance Ministers is a sterling effort by the Government and an important milestone towards one of the biggest tax reforms in India. The draft reports on key business process was released for public comments and feedback in October – November 2015 which gave the public an insight to the mechanism which will become applicable post implementation of the GST law.

The Model GST Law covers the following –

1. Goods and Services Tax Act, 2016
2. The Integrated Goods and Services Act, 2016
3. GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016

Coverage of GST Law

The GST Act applies to the whole of India and the respective State (in case of SGST), as the case may be. For the first time, the State of Jammu and Kashmir has not been excluded as regards the application of the tax regime that is applicable to the rest of India.

Goods and Services Tax Act, 2016

Key definitions:

- **Aggregate turnover** means the

aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be. Aggregate turnover does not include the value of supplies on which tax is levied on reverse charge basis and the value of inward supplies.

- The definition of **capital goods** is similar to present definition of capital goods under CENVAT Credit Rules, 2004 (CCR) before amendments made in the Union Budget 2016 - 17.
- **Goods** means every kind of movable property including securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply. However, the term movable property shall not include intangible property.
- **Services** mean anything other than goods including intangible property and actionable claim but do not include money.
- **Export of services and Import of services** have been defined to exclude transactions between

establishments of the same person in India and outside India.

- **Zero-rated supplies** are defined as any supply of goods/ services on which no tax is payable but credit of related input tax credit is admissible, which includes export of goods/ services.
- **Input** means any goods other than capital goods used or intended to be used by a supplier for making an outward supply in the course or furtherance of business.
- **Input Service** means any service used or intended to be used by a supplier for making an outward supply in the course or furtherance of business.
- **Inward Supply** in relation to a person means receipts of goods/services whether by purchase, acquisition or any other means, whether or not for any consideration.
- **Outward Supply** means supply of goods/services made or agreed by a person in the course or furtherance of business except in case of such supplies where tax is payable on reverse charge.
- **Tangible Property** means any property that can be touched or felt.
- **Intangible property** - Any property other than tangible property



Scope of Supply:

Supply includes –

- a. all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- b. importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and
- c. supply specified made or agreed to be made without a consideration –
 - Permanent transfer/disposal of business assets,
 - Temporary application of business assets to a private or non-business use.
 - Services put to a private or non-business use.
 - Assets retained after deregistration.
 - Supply of goods/services by a taxable person to another taxable person or non-taxable person in the course or furtherance of business.
- d. It also includes supplies covered under Schedule II which primarily covers deemed supplies (akin to current declared services) and also covers deemed supply of goods.

Further, transactions between principal and agent are deemed to be a supply. Also, the supply of any branded service by an aggregator, under a brand name or trade name owned by him is deemed to be a supply of the said service by the aggregator.

Levy & collection of tax:

- CGST/SGST on all intra-state supplies of goods and/or services
- IGST on all inter-state supplies of goods and/or services
- Tax shall be levied on reverse charge basis on supply of certain specified services and goods which are to be notified

Composition Levy:

- Compounded lower rate of tax proposed to be prescribed for registered taxable persons having turnover upto INR 50 lacs at a rate not less than one percent of the turnover during the year.
- The option of composition levy is not applicable to a taxable person effecting inter-state supplies of goods/services.
- This option is available to a registered taxable person only when all the registrations under the same PAN held by the taxable person also opt to pay tax under the composition levy scheme.

Scope of Taxable person:

- Taxable person means any person who carries out any business at any place in India and is required to be registered under the GST Law.
- An agriculturist shall not be considered as a taxable person.
- A person required to be registered under the Act will not be considered as a taxable person until his aggregate turnover in a financial year does not exceeds INR ten lakhs.
- For a person conducting business in north-eastern states including

Sikkim, the threshold limit is INR five lakhs.

- The following persons shall not be considered as taxable person –
 1. Any employee providing services to his employer in the course of his employment.
 2. Any person engaged in the business of supplying goods/services not taxable under the GST Act.
 3. Any person receiving services for personal use within a specified limit.

Time of Supply:

- Time of supply of goods is the earliest of:
 1. Date of removal/ making available goods by the supplier;
 2. Date of issue of invoice;
 3. Date of receipt of payment by the supplier; or
 4. Date on which the recipient shows the receipt of goods in his books of accounts.
- Time of supply of services is the earliest of:
 1. Date of issue of invoice or date of receipt of payment, if invoice is issued within prescribed period,
 2. Date of completion of service or date of receipt of payment, if invoice not issued within the prescribed period,
 3. Date on which recipient shows the receipt of services in his books of accounts, where (i) or (ii) above does not apply.
- Time of supply under reverse charge is the earliest of:
 1. Date of receipt of supply;

2. Date of payment;
3. Date of receipt of invoice;
4. Date of debit in the books of accounts.

In addition to the above, there are provisions to determine the date of supply in case of continuous supply of goods/ services.

Value of Supply:

- The value of supply of goods/ services for levy of GST is the transaction value.
- To determine transaction value, specific additions are prescribed including value of goods/ services supplied free/ at concessional rates by the recipient to the supplier, subsidies linked to the supply, reimbursable expenditure, etc. In addition, royalties or licence fees related to the supply of goods and/ or services are to be added to the value of taxable supplies.
- The discounts, including the post-sale discounts known at the time of supply (and linked to specific invoices), are allowed as deduction from transaction value, which is quite similar to the provisions prevalent presently.
- There is no provision of MRP based valuation under the GST Law.
- The GST Valuation Rules prescribes different methods of valuation in case of failure of applicability of Transaction value i.e., Value by comparison, Computed Value Method & Residual Method.

Input tax credit (ITC)

- Every Credit of tax paid can be taken electronically

- Credit can be taken on inputs in stock, in semi processed state and finished stage
- Credit to be taken within one year from the date of tax invoice
- Credit available for Zero rated supplies
- A taxable person shall not be entitled to take ITC in respect of tax invoice after filing of GSTR - 3 and GSTR - 4 for the month of September (20th October) following the end of FY to which the tax invoice relates or filing of relevant annual return (31st December), whichever is earlier.
- The ITC restrictions present in the current CCR continue to be in force under the GST Law.
- Proportionate credit if the inputs are partly used for business
- Proportionate credit if the inputs are used in common for taxable supplies and not taxable and exempt supplies
- Transfer of credit allowed for change in constitution or on transfer of business
- Carry forward of ITC is allowed provided the same was admissible as input tax under earlier law and is also admissible under the GST Law.
- Unavailed cenvat credit in respect of capital goods not carried forward in a return furnished under the earlier law will be allowed under the GST law.
- There is no provision under GST Law of availing cenvat credit of capital goods in two installments i.e., 50% in each F.Y.

- Every inward supply furnished by a taxable person shall be matched with

the corresponding details of outward supply furnished by the supplier and in case of any mis-match, the same will be communicated to both the persons. If the discrepancy is not resolved within specified time limit, the same will be added to the output tax liability of the supply recipient.

Registration

- A person is required to get registered where he makes taxable supply of goods/services if his aggregate turnover in a F.Y. exceeds INR nine lakhs.
- For a taxable person conducting business in north-eastern states including Sikkim, the threshold limit is **four lakhs**.
- Where a business is transferred as a going concern, the transferor/ successor shall be liable to be registered from the date of such transfer/ succession.
- A person registered under the earlier law will be given **provisional** registration under GST law for **six months**, within which they have to submit specified information to be granted registration on final basis.
- A taxable person will have to take state-wise registration under the GST Law. The concept of centralized registration does not exist under this law.
- Multiple registrations within one state is allowed for different business verticals.

Returns

- The Model GST Law prescribes eight types of returns –



Return	For	To be filed by
GSTR-1	Outward supplies made by taxpayer	10 th of next month
GSTR-2	Inward supplies received by a taxpayer	15 th of next month
GSTR-3	Monthly return	20 th of next month
GSTR-4	Quarterly return for compounding Taxpayer	18 th of the month next to quarter
GSTR-5	Periodic return by Non-Resident Foreign Taxpayer	Within 7 days from date of expiry of registration
GSTR-6	Return for Input Service Distributor (ISD)	15 th of next month
GSTR-7	Return for Tax deducted at Source	10 th of next month
GSTR-8	Annual return	By 31 st December of next F.Y.

- There is no concept of revised return under the Model GST Law.

Tax deduction at source (TDS)

- TDS @ 1% on specific supplies by specific category of persons for a contract exceeding INR ten lacs.

Refund

- Application to be made to the respective officer within 2 years before expiry of relevant date.
- In case of export of goods/services, refund of 80% of the total amount claimed shall be provisionally granted; balance 20% shall be granted after verification of documents.
- Refund not eligible if return not furnished/tax paid

Job work –

Input Tax Credit shall be availed when:

- Inputs/Semi-finished/finished goods sent to job worker for job work provided the same to back by him within one hundred eighty days
- Capital goods sent to job-worker sent for job work provided the same to back by him within two years

- Capital /input goods ITC can be availed without their being brought to his place of business and period shall be counted from the date of receipt of inputs/capital goods by the job worker

Job work Special Procedure – Outward

- Supplies between principal and job worker and from thereon to subsequently another job worker would not be liable to GST on obtaining prior approvals
- The principal may bring back the goods or supply such goods from the place of business of the job-worker for domestic supply or Exports.

E-commerce

- Aggregator - supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.
- brand name or trade name means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label,

signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some other person using the name or mark with or without any indication of the identity of that person.

- branded Services means services which are supplied by an electronic commerce operator under its own brand name or trade name, whether registered or not.
- electronic commerce shall mean the supply or receipt of goods and / or services, or transmitting of funds or data, over an electronic network, primarily the internet, by using any of the applications that rely on the internet, like but not limited to e-mail, instant messaging, shopping carts, Web services, Universal Description, Discovery and Integration (UDDI), File Transfer Protocol (FTP), and Electronic Data Interchange (EDI), whether or not the payment is conducted online and whether or not the ultimate delivery of the goods and/or services is done by the operator
- electronic commerce operator shall include every person who, directly

or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply

of such goods and/or services on their own behalf

- In respect of goods sold/services provided through the E-commerce platform, tax to be collected at source on amount paid or payable by electronic commerce operators to its suppliers.

Integrated Goods and Services Tax Act, 2016 (IGST)

IGST is the tax levied on the supply of any goods/ services in the course of inter-State trade or commerce & supply of goods/ services in the course of import/export covered under inter-state trade or commerce.

Place of supply of goods

Particulars	Place of Supply
Movement of goods is involved	Location where the movement of goods terminates
Goods delivered by supplier to recipient/ any other person on direction of third person	Principal place of business of the third person who received the goods
Movement of goods is not involved	Location of goods at the time of delivery to recipient
Assembly or installation	Location of installation or assembly
Goods are supplied on a board a conveyance	Location where goods are taken on board

Place of supply of services

Particulars	Registered/ Unregistered	Place of supply
Default rule	Registered	Location of service recipient
	Unregistered	Location of the service supplier (where the recipient address on record is not available)
In relation to Immovable property	Not relevant	Location of the Immovable Property
Restaurant Services, personal grooming	Not relevant	Location where services are performed
Training and Performance Appraisal	Registered	Location of the person
	Unregistered	Location where the services are actually performed
Services by way of admission into an event	Not relevant	Location where the event is actually held
Services by way of organization of an event	Registered	Location of the person
	Unregistered	Location where the event is actually held
Services by way of transportation of goods	Registered	Location of the person
	Unregistered	Location at which goods are handed over for transportation



Particulars	Registered/ Unregistered	Place of supply
Services by way of transportation of passengers	Registered	Location of the person
	Unregistered	Location at which passenger(s) embark on the conveyance for a continuous journey
Services on board conveyance	Not relevant	Location of first scheduled point of departure of that conveyance
Home Television Services	Not relevant	Location where the cable or dish antenna is installed
Banking and Financial services	Not relevant	Location of the service recipient on the records of the supplier of services
Insurance services	Registered	Location of the person
	Unregistered	Location of the service recipient on the records of the supplier of services
Advertisement services to Government	Not relevant	Location of each state in proportionate supplies

Way forward:

The Model GST Law provides the much needed visibility and window for industry to understand the GST framework and provide the necessary feedback to shape the final law. However, there are still unanswered questions on key areas like treatment of supplies to SEZ / STP, transition of Central / State Government incentives in GST regime. In addition, no negative list, RCM or Abatement List has been specified. These issues should be resolved by the Government before the implementation of the GST law to avoid any post-implementation issues.

Bangalore Branch of SIRC of ICAI

is looking for immediate outright purchase of commercially converted land measuring between 20,000 to 40,000 sq. feet in Bengaluru- preferably in Basavanagudi, Jayanagar, Banashankari, JP Nagar, BTM Layout, Rajajinagar, Malleshwaram, Vijayanagar, and surrounding areas with proper and good approach road with 40 feet width, preferably a Prime Location having connectivity to Metro / Bus Station with clear title and / or Commercial Building between 40,000 to 60,000 Sq. Ft. built up area, constructed strictly as per BBMP approved plan without any deviation, OC Certificate is a must. Ready to move.

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COMPANY LAW - UPDATES - JULY 2016

CA K. Gururaj Acharya

1. MCA Updates

1.1 Due date for filing AOC – 4, AOC – 4 (CFS), AOC – 4 (XBRL) & MGT – 7 without additional fee extended to 29th October 2016 [General Circular 08/2016 dtd 29.07.2016]

Financial Statements (FS), incl. Consolidated Financial Statements (CFS), are required to be filed with ROC in Form "AOC-4" and "AOC-4 (CFS)" respectively within 30 days from the date of AGM of the Company. (in case the AGM is not held, AOC-4 & AOC-4 CFS are to be filed within 30 days of the due date of AGM)

The Annual return as on Balance Sheet date must be filed in Form "MGT-7" within 60 days from the date of AGM of the Company (in case the AGM is not held, MGT-7 is to be filed within 60 days of the due date of AGM).

Presently, Forms AOC-4, AOC- 4 (CFS), AOC-4 (XBRL) are under revision and will be deployed by the Ministry by end of August 2016.

In light of the above, the last date for filing of **AOC-4, AOC-4 CFS, AOC-4 XBRL** and **MGT-7** in cases where due date of AGM is on or after 01.04.2016 **without additional fees** have been extended to **29th October 2016**.

1.2 Co's (Cost Records and Audit) Rules, 2014 amended [Amended Rules dtd 14.07.2016]

All Co's (Incl. Foreign Co's) engaged in Production of Goods / Providing of Services [in 6 Regulated Sectors (Table A) & 33 Non-Regulated Sectors (Table B)] with Overall Turnover from ALL Products & Services in the immediately preceding FY > ` 35 Crores are required to maintain Cost Records⁽¹⁾ WEF FY 2014-15.

Further, Cost Audit⁽²⁾ is applicable to such companies if the following criteria is satisfied.

Particulars		Overall Turnover from ALL Products & Services in PFY	+	Aggregate Turnover of Indl. Products & Services for which Cost Records are to be maintained
A.	Co's engaged in Regulated Sectors (6 specified – Table A in Annexure 1)	≥50 Cr	+	≥25 Cr
B.	Co's engaged non-regulated Sectors (33 specified – Table B in Annexure 1)	≥ 100 Cr.	+	≥35 Cr

(1) Cost Records –

- to be maintained for Products / Services specified in A & B only.
- Not Applicable if - Co. is classified as Micro or Small Enterprise, incl. as per the TO specified in S. 7(9) of MSMED Act, 2006.

(2) Cost Audit Not Applicable to Companies –

- Whose Revenue from Exports in Foreign Currency > 75% of Total Revenue
- Operating from SEZ
- engaged in generation of electricity for captive consumption through Captive Generating Plant. (underlined portion now inserted)



The following are the new provisions w.r.t Cost Records and Cost Audit

- a. Written Consent & Eligibility Certificate (similar to the one given by Statutory auditor) to be obtained from the Cost Auditor prior to his appointment.
- b. Eligibility certificate to state that –
 - a. Individual / Firm is eligible for appointment and is not disqualified under Co's Act & the Cost and Works Accountants Act, 1959.
 - b. Individual / Firm satisfies the criteria provided in S. 141 of Co's Act as applicable.
 - c. The proposed appointment is within the limits laid down under the Co's Act; and
 - d. The list of proceedings against Cost Auditor / Firm or any Partner pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- c. Provisions enabling removal of Cost Auditor introduced –
 - a. Cost Auditor may be removed before expiry of his term through Board Resolution after giving him a reasonable opportunity of being heard recording the reasons in writing;
 - b. This Board Resolution to be attached to Form CRA-2 for intimating appointment of another Cost Auditor.
- d. Cost Statements (incl. other statements to be annexed to Cost Audit Report) to be approved by BOD before they are signed by any Director authorized by Board, for submission to Cost Auditor for his report.
- e. Cost Auditor to forward duly signed Cost Audit Report to BOD of the company within 180 days from the closure of FY.
- f. Cost Audit Report shall be furnished to CG within 30 days from receipt of Cost Audit Report with full information / explanation on every reservation / qualification contained therein in **Form CRA-4** in **XBRL** format only

1.3 Reg. issue of Equity Shares with differential Rights [Co's (Sh. Cap & Debentures) 3rd Amd Rules, 2016 - 19.07.2016]

- a. The conditions to be complied by Companies in order to issue Equity Shares with differential Rights inter-alia included: Rule 4(1)(g)
No defaults in
 - Payment of dividend on Pref. Shares, or
 - Repayment of Term Loan from PFI / State level Fin. Inst. / Sch. Bank and Interest thereon, or
 - Payment of Statutory dues relating to Employees, or
 - Crediting amounts to IEPF to the CG.**Proviso has now been introduced to the effect that Co. may issue Equity Shares with differential rights upon expiry of 5 years from the end of FY in which such default was made good.**
- b. **Issue of Sweat Equity Shares in Start-up Companies – Rule 8 (4)**
 Sweat Equity Shares cannot exceed 25% of PUC or Rs.5 Cr, whichever is higher, at any time
 Proviso has now been introduced to the effect that Startup Co's may issue Sweat Equity Shares upto **50% of Paid up capital** upto 5 years from its date of Incorporation.
- c. **Issue of Employee Stock Option Plans (ESOP) in Start-up Companies – Rule 12 (1) (C) (ii)**
 ESOP's cannot be issued to –
 - I. Promoters or Persons belonging to promoter group, or
 - II. Director who directly or indirectly holds > 10% of Co's outstanding Equity Shares.
 Proviso has now been introduced to the effect that a Start-up Co's can issue ESOP's to persons referred to in (i) & (ii) above upto 5 yrs from date of its incorporation.

d. Reg. allotment by way of Preferential Offer –[R. 13(2)(c) omitted]
<ul style="list-style-type: none"> Condition that such Securities shall be issued only if it is fully paid up at the time of their allotment – Omitted[R. 13(2)(c) omitted] <p><u>i.e Partly paid-up securities can now be allotted under preferential offer.</u></p> <ul style="list-style-type: none"> In case of <u>Convertible securities offered on Preferential Basis</u>, the <u>Conversion Price</u> was required to determined beforehand based on the Valuation report by Registered Valuer. <p>Companies now have the <u>option of determining the Conversion price within 30 days</u> prior to the date when the holder becomes entitled to apply for shares (<i>with disclosure in expln. Statement</i>)</p>
e. Filing of Form SH-7 required where <u>Co's not having Share Capital increases number of its members</u> .(Rule 15)
<p>f. Reg. <u>issue of Secured debentures</u> – Rule 18 (1) (b)</p> <p>Issue of Secured Debentures to be secured by the creation of Charge, on Properties / Assets of the Company or <u>its Subsidiaries or its Holding Co. or its Associates co's</u>, having value which is sufficient for the due repayment of amount of debentures and interest thereon;</p> <p><u>i.e charge can be now created on assets of Subsidiaries, Holding Co. and Associates co's.</u></p>
<p>g. Rule 18(7)(b) requires creation of Debenture Redemption Reserve for the purpose of redemption of debentures by transfer of certain percentage of profits</p> <p>In case of <u>premature redemption of debentures</u>, transfer of amount to Debenture Redemption Reserves as is necessary for redemption can exceed the specified limits.</p>

1.4 Co's (Accounts) Amendment Rules, 2016 dated 27.07.2016

<p>a. <u>Relaxation from preparation of Consolidated FS by intermediate Subsidiary Co's</u></p> <p>CFS need not be prepared by <u>Intermediate (wholly-owned or partly-owned)Subsidiary Co's</u> if all the following three conditions are complied with –</p> <ol style="list-style-type: none"> All its other members(<i>incl. those not otherwise entitled to vote</i>)having been <u>intimated in writing</u>(proof of delivery of such intimation to be available with Co.) <u>do not object</u> to the Co. not presenting CFS. It is a Co. whose securities are <u>not listed</u> or are not in the process of listing on any stock exchange, whether <u>in India or outside India</u>. Its Ultimate or any Intermediate Holding Co. files CFS with ROC which are in compliance withapplicable AS. <p><u>[Note – prior to this amendment, exemption from preparation of CFS was available ONLY to INTERMEDIATE WHOLLY-OWNED SUBSIDIARY CO's, other than those whose immediate parent is a company incorporated outside India (vide Companies (Accounts) Amendment rules dated 14th October 2014)]</u></p>
<p>b. <u>Matters to be included in Boards report</u> – (Rule 8)</p> <p>Board's Report shall be prepared based on Standalone FS of the Co. and the report shall contain a separate section wherein a report on the performance & financial position of each of the subsidiaries, associates and JV Co's included in the CFS is presented <u>and shall report on highlights of performance of SubsidiariesAssociates & JV Co's and their contribution to the overall performance of the Co. during the period under report.</u></p>



c. **Reg. Appointment of Internal Auditors u/s. 138 –**

- i. Internal Auditor may be either an **individual** or a **partnership firm** or a **body corporate**.
- ii. Internal Auditor may be a **Chartered accountant^(*)** or a **Cost accountant^(*)**, or such other professional as may be decided by the Board

^()whether engaged in practice or not*

(Prior to the above amendment which is clarificatory in nature, confusion existed as to whether Companies / Body Corporates can act as Internal Auditors. This amendment seeks to address this issue)

d. Form **AOC – 1 (Form of Statement containing salient features of FS of subsidiaries)** substituted.

(additional details to be given - date since when subsidiary was acquired (Part – A), Date on which Associate or Joint Venture was associated or acquired (Part – B))

e. Form **AOC – 4** substituted

1.5 Co's (Incorporation) third Amendment Rules, 2016 dated 27.07.2016 -

a. **Reg. One Person Co's–**

~~No person shall be eligible to incorporate more than a One Person Co. or become nominee in more than one such Co.~~

A **Natural Person** shall not be member of more than a One Person Company **at any point of time** and the said person shall not be a nominee of more than a One Person Co.

(Prior to the amendment, the reading of the Rule could have been interpreted to mean that a person could incorporate / be nominee in One and only one OPC during his entire life time. The amendment seeks to address this anomaly by clarifying that a Natural Person can be a Member / nominee of one OPC at a time)

b. **Reg. Company Incorporation**

- i. The names, address, description and occupation of the Subscribers to MOA & AOA and the witness can be type-written (!!) or printed. However, signatures by subscribers & witness to be manually appended.

(A welcome change towards ease of doing business!!)

- ii. Proof of Identity (Indian Nationals - PAN & Voters ID / Passport Copy / DL / Aadhar, Foreign National / NRI – Passport Copy) and Address Proof (Bank Statement, Electricity / Telephone / Mobile / Utility Bill not older than 2 months) of Subscriber to MOA need not be attached to INC-7 in case the subscriber is holding a **valid DIN**, the **latest particulars** have been updated in DIN on MCA records, and a **Declaration** to this effect is given.

- iii. INC-10 (Specimen Signature and Latest Photograph - self attested) – omitted

c. **Publication of particulars on Co's Website –**

Following particulars to be hosted on **Landing / Home page** by every Co. which has a website for conducting **online business or otherwise –**

- i. Name
- ii. Registered Office Address
- iii. CIN
- iv. Telephone No.
- v. Fax no. (if any)
- vi. e-mail
- vii. Name of the Person who may be contacted in case of any queries or grievances.

d. **Shifting of registered office within the same State –**

Shifting of Registered office is not allowed if any **inquiry / inspection / investigation** has been initiated against the Co. or any **prosecution** is pending against the Co.

New Provision inserted - On completion of such inquiry / inspection / investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.

e. **Reg. Change of Name of a Company –**

Change of name not allowed to Co's which have **not filed Annual Returns or FS**, or which have failed to **pay / repay matured deposits / debentures / interest thereon**

New Provision inserted - Change of name shall be allowed upon filing necessary documents or payment / repayment of matured deposits / debentures / interest thereon.

f. **Reg. shifting of Registered office from one State to another –**

- i. NOC from RBI to be attached to application in case of NBFC's
- ii. Notice with copy of application (INC-26) by RPAD need not be served to SEBI by listed Co's.
- iii. Shifting of RO will be allowed even if any inquiry / inspection / investigation has been initiated against provided on completion of such inquiry, etc no prosecution is envisaged.

1.6 Others -

- i. Certain Exemptions to **Foreign Co's being Airlines Co's** from compliance of S. 381(1) [Filing of Accounts of Foreign Co's with ROC] [Notfn. SO 2463(E) dated 19.07.2016]
- ii. Rules enabling Conversion of Unlimited Liability Co. into a Limited Liability Co. by shares or guarantee issued (insertion of Rule 37 in Co's (Incorporation) third Amendment Rules, 2016 dated 27.07.2016)
- iii. **National Company Law Tribunal Rules, 2016 and National Company Law Appellate Tribunal Rules, 2016** notified on 21st July 2016

[Note - National Company Law Tribunal and National Company Law Appellate Tribunal were constituted WEF 01.06.2016 vide Notfn. S.O. 1932(E) & 1933(E)]

- iv. "Court of Additional Sessions Judge-03, South-West District, Dwarka" having jurisdiction over Delhi, designated as **Special Court** for the purposes of providing Speedy Trial of offences punishable under Co's Act 2013 with imprisonment of ≥ 2 years
- v. Shri Ratakonda Murali and Dr. Ashok Kumar Mishra posted at the NCLT Bengaluru Bench (order dated 04.07.2016)

2. Other Updates

- 2.1 ICAI - Exposure Draft of the Guidance Note on Accounting for Oil and Gas Producing Activities** (for entities to whom Ind AS is applicable) issued on 02.08.2016 (Last date for sending Comments is 31.08.2016)
- 2.2 SEBI - Extension of due date** for submitting Quarterly and half yearly results for QE 30.06.2016 and HYE 30.09.2016 respectively by one month for **Listed Co's which are required to comply with Ind-AS** WEF 01.04.2016 (SEBI circular dtd 05.07.2016)



Annexure 1

Co's (Cost Records and Audit) Rules, 2014 (*)

Table A – Regulated Sectors

1.	Telecommunication Services, <i>incl. activities that requires authorization or license issued by Dept. of Telecommunication;</i>
2.	Generation, transmission, distribution and supply of electricity;
3.	Petroleum products; including activities regulated by the Petroleum and Natural Gas;
4.	Drugs and pharmaceuticals;
5.	Fertilizers;
6.	Sugar and industrial alcohol;

Table B – Non-regulated Sectors

1.	Machinery & mechanical appliances used in defense, space & atomic energy sectors excl. any ancillary item or items;
2.	Turbo jets and turbo propellers;
3.	Arms, ammunitions and <u>Explosives</u> ;
4.	Propellant powders; prepared explosives (other than propellant powders); safety fuses; detonating fuses; percussion or detonating caps; igniters; electric detonators;
5.	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus;
6.	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons and parts of such vehicles; that are funded to the extent of $\geq 90\%$ by Government or Government agencies;
7.	Port services of stevedoring, pilotage, hauling, mooring, re-mooring, hooking, measuring, loading & unloading services ;
8.	Aeronautical services of air traffic management, aircraft operations, ground safety services, ground handling, cargo facilities and supplying fuel rendered by airports;
9.	<u>Iron</u> and Steel;
10.	Roads and other infrastructure projects
11.	Rubber and allied products;
12.	Coffee and tea;
13.	Railway or tramway locomotives, rolling stock, railway or tramway fixtures and fittings, mechanical (incl. electro mechanical) traffic signalling equipment's of all kind;
14.	Cement;
15.	Ores and Mineral products;
16.	Mineral fuels (other than Petroleum), mineral oils etc.;
17.	Inorganic chemicals, organic or inorganic compounds of precious metals, rare-earth metals of radioactive elements or isotopes, and organic chemicals;
18.	Base metals;
19.	Jute and Jute Products;
20.	Edible Oil;
21.	Construction Industry engaged in real estate development, incl. an industrial park or SEZ;

22.	Health services, namely functioning as or running hospitals, diagnostic centres, clinical centres or test laboratories;
23.	Education services, other than such similar services falling under philanthropy or as part of social spend which do not form part of any business;
24.	Milk powder;
25.	Insecticides;
26.	Plastics & polymers;
27.	Tyres & tubes;
28.	Paper;
29.	Textiles;
30.	Glass;
31.	Other machinery & <u>Mechanical Appliances</u> ;
32.	Electricals or electronic machinery;
33.	Production, import & supply or trading of Certain medical devices.

(*) Underlined portion now inserted through Amended Rules dated 14th July, 2016.

Congratulations



CA. Raghu K

has been nominated by
the Ministry of Finance as
Non Official Director of Indian Overseas Bank
for a period of 3 years.



CA. N. Nityananda

has been nominated by
Government of India as a Government Nominee
Director on the Board of Central bank of India,
for a term of 3 years.

RANK HOLDERS FROM BANGALORE

CA FINAL MAY 2016 EXAM

Sl. No.	Registration No.	Name of the Student	Marks Obtained	Rank
1	SRO0365923	ABISHEK V	571	13
2	SR00352695	SATHYA S	536	40



TAX UPDATES - JUNE 2016

CA Chythanya K.K., B.com, FCA, L.L.B., Advocate



VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

91 VST – Part 2 & 3

Reference/ Description

[2016] 91 VST 250 (Guj. – HC): State of Gujarat v. Balram Cement Ltd.

- In the instant case the Dealer carried on the business of manufacture and sale of cement within the State of Gujarat as well as outside the State. The Dealer claimed the input-tax credit on purchases of petroleum coke.

The Assessing Officer reduced the Dealer's claim to input-tax credit by holding that petroleum coke could be used as substitute for coal, a fuel and therefore, 4% of the purchase price was required to be reduced under Section 11(3) of the Gujarat Value Added Tax Act, 2003.

On appeal before the Honourable Gujarat High Court, the Court observed as under:

- (a) Section 2(19) of the Gujarat Value Added Tax Act, 2003 defines the expression 'raw materials' which does not include fuels for the purpose of generation of electricity.
- (b) As per Section 11(1) and Section 11(3)(a), a dealer is entitled to tax credit in respect of raw materials used in the manufacture of taxable goods as specified therein.

(c) However, Section 11(3)(b), inter alia provides that the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of 4% on the taxable turnover of purchase within the State of the fuels used for the manufacture of goods.

(d) Therefore, in respect of fuels used in the manufacture of goods, the tax credit is required to be reduced by 4% of the taxable turnover of purchases of such inputs.

However, in the instant case, the Court observed the facts that petroleum coke used in the manufacture of cement, during the course of manufacturing process gave rise to an exothermic reaction, as a result whereof it lost its apparent identity and formed part of the end-product.

Therefore, the Court held that petroleum coke formed one of the ingredients of cement and merely because there was an exothermic reaction in the preparation of cement which may be facilitated by its presence, petroleum coke would not cease to be a raw material.

Thus, the Court held the petroleum coke used in the manufacture of clinker clearly fell within the ambit of expression 'raw material' as contemplated in Section 2(1) of the Gujarat Value Added Tax Act, 2003.

INCOME TAX

PARTS DIGESTED:

- a) 239 Taxman – Part 5
- b) 157 ITD – Part 9
- c) 158 ITD – Part 9

Reference/ Description

[2016] 69 taxmann.com 307 (Mum. – Trib.); [2016] 239 Taxman Part 5 (Weekly Browser): Reliance Communications Ltd. v. Asst. CIT (TDS) - In the instant case the Assessee telecom operator submitted that since payment of roaming charges to other telecom operator did not require any human intervention, it could not be regarded as fees for technical services requiring TDS under section 194J.

On appeal before the Honourable Tribunal, it was noted that issue as to whether roaming charges paid by assessee to other telecom operator was in nature of 'fees for technical services' did not reach final conclusion, in view of fact that case of Vodafone Essar Mobile Services Ltd., dated 31-12-2010 had not been concluded by any appellate authority or any court.

Therefore, Tribunal held that it should be refrained from deciding issue whether roaming charges paid were in nature of 'fees for technical services' and assessee was liable for deduction of tax at source under section 194J.

However, the Tribunal held that since assessee had furnished declaration from various payees and had also furnished PAN details and jurisdiction in which payees were assessed for tax, assessee could not be treated as 'assessee-in-default' and since deductees had themselves incurred huge losses and thus, no income-tax was payable, assessee could not be held to be assessee-in-default nor non-deduction of tax would entail levy of interest under section 201(1A).

[2016] 69 taxmann.com 321 (Mum. – Trib.); [2016] 239 Taxman Part 5 (Weekly Browser): Dy. CIT v. Mahanagar Gas Ltd. - In the instant case the Honourable Mumbai Tribunal held that reimbursement of salary of seconded employees to AE couldn't be treated as 'fees for technical service' so as to attract TDS under Section 194J of the IT Act.

[2016] 286 CTR 94 (Del. - HC); [2016] 48-A BCAJ 456 (Del. – HC): Naigara Hotels and Builders (P) Ltd. v. CIT - In the instant case the Honourable Delhi High Court held that income from licensing of terrace floor for telecom antenna, constructing room for its personnel and storage constitutes 'income from house property' and not 'income from other sources'.

TS-501-HC-2016(DEL)-TP: Indorama Synthetics (India) Ltd. v. Addl. CIT - In the instant case the Honourable Delhi High Court dealing with the provision of Transfer Pricing held as under:

- (a) Satisfaction to be arrived at by the AO regarding the existence of the international transaction

or specified domestic transaction, even prima facie, is a sine qua non for making the reference to the TPO;

- (b) Section 92CA(1) does not itself talk about opportunity of hearing to be granted to the assessee regarding jurisdiction of the AO to make such reference, such requirement appears to be implicit in the very nature of the procedure that is expected to be followed by the Assessing Officer.
- (c) CBDT's Instruction No. 15 of 2015 (as replaced by CBDT Instruction No.3 of 2016 dated 10th March 2016 which specifically lays down procedure to be followed by AO before making TPO reference) clarifies the correct legal position and cannot be construed as not applying to the facts on hand. Since it is a procedural aspect and is intended to the benefit to the Assessee, it requires to be applied even to the present case where a reference was earlier made by the AO to the TPO on 31st March 2013 and thereafter

Thus, the Court set aside the reference made by the AO to the TPO in respect of assessee's (Indian company) import of raw materials from a company incorporated in Thailand, despite assessee's objection that they were not associated enterprises as contemplated in Section 92A of the IT Act.

[TS-381-SC-2016]: CIT v. Veerabhadrapa - The Hon. Supreme Court dismissed the appeal by the department against the Karnataka HC

decision holding that no penalty under section 271(1)(c) could be levied when the show cause notice under section 274 was issued in a standard proforma without specifying whether the assessee has concealed the particulars of his income or furnished inaccurate particulars thereof.

TS-503-ITAT-2016(Bang)-TP: AXA Technologies Shared Services Pvt. Ltd - The Hon. Bangalore Tribunal held that without giving a finding that the assessee has also incurred expenditure in respect of the same services over and above the management fees paid to the AE it cannot be said that the assessee has not received the alleged management services. It was held that when management fees are paid under an agreement with AE and there is no finding that such services were also availed separately from third parties and booked as expenditure in P&L account, then determination of ALP at Nil is not acceptable.

SLP 4919 of 2013: CIT v. Bovis Lendlease - The Hon. Supreme Court dismissed the appeal by the department against the Karnataka HC decision holding that payer cannot be regarded as assessee in default when he paid sums without TDS on the strength of Nil TDS certificate issued by the department on the application made by the payee under section 197. The department contended that the certificate issued is not valid if the sum was already credited and the payer could not have acted on such certificate while paying.



DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra



I) **Bharat Earth Movers Limited, BEML Soudha, Bangalore v. State of Karnataka. -2016(85) Kar. L.J. 209 (HC)(DB).**

The appellant had made stock transfers and had effected purchase of petroleum products including furnace oil. The appellant has claimed input tax credit at the rate of 12.5% in case of furnace oil and other petroleum products. In the absence of classification of purchases of furnace oil and other petroleum products, 10% of the total of 12.5% purchases was presumed to be purchase of petroleum products. On inspection, it was also noted that the dealer had not applied the restrictions of section 11(a) (5) and 11(a)(6) while claiming Input tax credit with respect to purchases utilized for stock transfers and on purchases of petroleum products. The dealer has contended that the formula of restriction of input tax and short payment of tax is unintentional and not deliberate since there has arisen a refund of Rs. 19,88,44,369/-vide the orders of the Prescribed Authority.

Against the contentions of the appellant, the prescribed authority stated that the said refund did not arise due to prompt payment of taxes by the appellant but because the appellant had paid a tax of Rs. 20 crores prior to the orders, in which the reassessment orders was rectified after production of statutory forms which led to the above refund. Consequently, the contention

of the appellant does not establish any unintentional or non-deliberate act of the appellant.

The circular 13/2006-07 clearly states that the question of non-applicability of correct formula could be said as unintentional if there is ambiguity in the applicability of such formula. Also, the appellant has failed to establish any confusion that existed at the time of application of the formula. In the absence of such confusion, and failure of applying the said formula, the benefit of the circular cannot be given to the appellant. On the above grounds of the prescribed authority, the appeal raised by the appellant was dismissed.

II) **Cargotec India Private Limited, Bangalore v. State of Karnataka. -2016(85) Kar. L.J. 333(Tri.) (DB).**

The appellant is engaged in the manufacture, sale and distribution of material handling equipment's, etc. including spare parts. He is also a service provider in maintenance equipment's. The spare parts used for the purpose of maintenance is either imported or purchased locally. The goods produced are transferred to the warehouses in different states, from where they are finally distributed to customers on receipt of an order. It has also made stock transfer of spare parts to different states. The prescribed Authority has treated the same stock transfers as inter-state sales and had decided to levy tax on the same. The appellant contended

that in spite of making the payment without any liability under protest and on seeking clarification from the authority on the levy of Inter-state sales, the authority failed to hear the appellant. Also, when the appellant asked for an opportunity to explain facts and on pointing out irregularities in the order, the authority refused to hear the appellant and gave no clear reasoning as to the reason for considering stock transfer as an interstate sale and levying tax on the same. The appellant states that the movement of goods is a continuous process and not as a result of sale or an incident of contract of sale. The appellant has submitted 'F' forms in order to claim exemption under stock transfers but the same was neglected by the authority. As against this, the prescribed authority had contended that the transfer of goods to another state was against a predetermined order received from the customer.

The appellant has submitted the following contentions:

- Reasonable opportunity being denied
- Inaction with respect to the rectification application
- Non assigning of valid reasons for creating tax demands and
- Deviating from the statutory provisions

Therefore the levy of tax on stock transfers being treated as interstate

sales by the prescribed Authority is set aside and the interest and penalty relating to the disputed stock transfer transaction being treated as interstate sale is cancelled.

**III) Hydrostatic Machines,
Udyambag, Belgaum v. State of
Karnataka (2016(85) Kar. L.J. 268
(Tri.) (DB)).**

The appellant is a manufacture of hydraulic presses and power packs as per the needs of the purchaser. Sale of such goods is not affected until they undergo a trial run and are approved by the customer. In case of any advance received from the customer, such advance is not treated as sale consideration until the goods are approved by the purchaser. After giving due notice to the Assessing authority about the seizure of books of accounts by the Central Excise Authorities, the Assessing authority obtained a soft copy of the same from the computer system which was also seized by the Central Excise Authorities, without giving such information to the appellant. The Assessing authority states that during the month of April, 2005, the appellant has received advances amounting to Rs. 9,92,750/- which have not been declared and put to tax. As against this, the appellant had filed an appeal before the First Appellate Authority and on being rejected had been appealed before the Tribunal.

The main contention stated by the appellant is that the assessment orders were passed without giving the appellant, a copy of the material seized which is in violation with the principles of natural justice. Since, the information obtained as a soft copy from the computer system that was seized on the basis of which the emerging tax

liability had been fastened, was not furnished to the appellant. Therefore, the opportunity to rebut the proposal has not been given to the proposal.

Further, it is also stated that the advances received, pertain to single buyer named M/s Kiran Pressing Factory during October 2006, December 2006 and February 2007. It has also been submitted that the business commenced with effect from 28th February, 2006, and there have been no receipts during the month of April, 2005, which is evident from the registration records. Hence, no advances have been received during the period April 2005 to March 2006. The appeal petitions raised by the appellant have been allowed and the orders of the lower authorities were set aside.

**IV) Vasuvius India Limited,
Toranagallu Taluk v. State of
Karnataka. -2016(85) Kar. L.J.
242 (HC) (DB)**

The appellant is a manufacturer of Refractory Monolithic Compositions, also known as Monolithic Bricks. The sales turnover towards the bricks was assessed to tax by the Assessing authority @ 12.5% for the period April 2005 to March 2006, classifying the goods as unclassified goods under the Act. The appellant has contended that the item 'Monolithic Bricks' falls under Entry 2 of the Third Schedule of the Act, under the head 'All kinds of bricks including fly ash bricks, refractory bricks and the like; asphaltic roofing sheets; earthen tiles', and hence, attracts tax only at the rate of 4%. Also it is stated that the nature of use of the bricks was for the purpose of constructing furnaces and hence it is part of the constructing materials though it was not used in the regular construction but is like refractory bricks and hence will form part of 'refractory

bricks and the like' and should attract tax @ 4% instead of 12.5%. The appeals of the petitioner were allowed and 50% of the tax deposited by the appellant was to be refunded.

**V) Vimal Enterprises, Hubli v. State
of Karnataka 2016 (85) Kar. L.J.
261 (Tri.) (DB)**

The appellant is a dealer in ginning machine bearings, nuts and bolts, forging and tools. The appellant has been subjected to reassessment wherein based on the trading account for the period March, 2011, the assessing authority has restricted the amount of sales returns amounting to Rs.1,47,109/- in the absence of any documentary evidence produced. Also, it has been stated that packing and forwarding charges of Rs. 46,382/- have not been disclosed in the returns, and hence, the same has been subjected to tax. Penalty and interest has also been levied. As against this, the appellant has preferred an appeal before the Tribunal, after being aggrieved before the First Appellate Authority. The appellant has contended that the assessing authority has passed the order without giving the appellant, sufficient time to reply to the notice. Also, no refund has been claimed, towards the tax amount on the relevant sales and purchase returns, which results in no loss of revenue to the government. The appellant has also contended that relevant credit notes, sale invoices etc. have been issued by the dealer, which on production, have not been taken into consideration by the appellate authority. With regard to packing and forwarding charges, it has been stated that the respective charges are not liable to tax, considering them to be post sale expenses. It has also been stated that the orders have been



passed for the entire year, when the period in question, pertains to one month only and thus violating the rules. The assessing authority has failed to check the Form VAT 100 filed by the appellant for the relevant tax period for further finding before the issue of such order. The deduction of sales and purchase returns can be claimed, only if the same has been declared in Form VAT 100 of the relevant tax period. The appeals of the appellant have been allowed. The appellant has been given a time frame of 30 days, within which, relevant documents are required to be submitted, and the case has been remanded back to the lower authorities for reconsideration.

VI) Ravji Patel, Proprietor, M/s Shanti Steel and Sanitary Syndicate, Raichur v. State of Karnataka.-2016(85) Kar. L.J. 317 (Tri.) (DB)

The appellant is a registered dealer who has been subjected to reassessment for the period April 2011 to March 2012. In the orders, the assessing authority has disallowed input tax credit which respect to purchases affected from three specific dealers, M/s Balaji Sales Agencies, M/s Royal Enterprises, Bangalore and M/s Sri Gajanna Steels, Bangalore. The Assessing authority has levied penalty and interest under Section 36 of the Act. The appellant has contended that there has been no default on his part and TIN numbers of all the above dealers have been submitted along with the amount of purchase and relevant input tax. He has also contended that the burden of proving that the selling dealers who have issued the tax invoice have filed their returns have disclosed the turnover does not lie on the appellant.

In case the selling dealer has not

deposited the tax collected on the invoice, to the government, that does not render the appellant liable for the same. The appellant has made purchases of iron and steel in the normal course of business and hence, he cannot be held liable for any mistake of the dealer. Also, the iron and steel purchased have been dispatched with valid way Esugam bills, downloaded from the official Commercial Tax website, Government of Karnataka.

Annexure of ledger extract, tax invoices and payment have been furnished for the purpose of the same. To this the First Appellate authority states that the purchase transactions are not genuine transactions since no specific reasoning has been assigned. It has been specified that the selling dealers are fictitious and are involved in only issuing bills without any transaction in goods. The appellant has stated that on mere letters of the Additional Commissioner the appellate authority cannot render the appellant liable without any further finding relating to the Form VAT 100 filed by the selling dealer etc. The appeal of the appellant has been allowed. The matter has been remanded back to the lower authorities for assessing the amount of input tax credit deduction based on the material evidence produced by the appellant.

VII) SAP INDIA PRIVATE LIMITED, Salapuria Softzone, Wing-A, Bellandur Post, Bangalore v. State of Karnataka.-2016(85) Kar. L.J. 273 (Tri.) (DB)

The appellant is a supplier of enterprise software products and is engaged in licensing of SAP ERP software to customers across India. The patched and updates that are directly dispatched

from SAP AG, Germany to the end customers located in India, are sale of goods in the course of import, falling under Section 5(2) of the CST Act, 1956 and thus exempt from tax. The appellate authority has levied tax on software maintenance charges, both on receipts from outside the state and within the state.

The appellate authority has not provided for sufficient reasoning on such levy of tax. The appellate authority has stated that dispatches made from SAP AG, Germany to the end customers are local sales, without any finding as to whether such sale goes through the appellant or not. Also, looking at the maintenance receipts extracts, it is noted that the assessing authority has included the sales made outside the state as taxable turnover under the KVAT Act which is incorrect. The appellant contends that prior to the levy, it first needs to be understood whether patches and updates are goods or not.

It has been stated that if such patches and updates contain line of codes, then it is considered as goods, else services. If it is considered to be goods, then it must be clearly understood that the transaction of sale is not routed through the appellant but he is only a service provider i.e. without any transfer of line of codes, for which the revenue is shared with SAP AG, Germany and hence, nothing can be taxed under the KVAT Act, 2003.

All the appeals of the appellant have been allowed. It has been decided that the revenue received by the appellant against software maintenance fee is nothing but revenue realized as a service provider and not as a seller of goods.



SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 32: PARTS 1 & 2

CA. A. Saiprasad

Case Laws

Whether service tax is payable on construction linked payments?

An Explanation was inserted wef 1.7.10 to the definition of taxable service of 'construction of residential complex service', expanding the scope of taxable service to include construction of residential complex intended for sale by builders to buyers, before or during construction (*similar terminology inserted post 1.7.12 in construction service u/s 66E(b)*).

The said explanation has been held as **ultra vires** by Delhi HC on the ground that there was no statutory mechanism to ascertain service component in case of a composite contract involving sale of undivided share of land.

HC hold that R.2A of Valuation Rules, 06 does not provide for valuation in the aforesaid case (*substantially similar R.2A exists post 1.7.12, save the fact that works contract composition scheme also sought to be included in R.2A post 1.7.12 – In the opinion of the author, such inclusion does not alter the applicability of the decision post 1.7.12*).

HC held that abatement of 75% u/n 1/06 ST (for period prior to 1.7.12, when gross value included value of land, materials and goods), (now abatement is 70% is provided u/n 26/12 ST when gross value includes value of land, materials and goods) could not substitute lack of machinery provision.

– **In the opinion of the author** said principle will apply post 1.7.12

Suresh Kumar Bansal V. UOI, 2016 (43) STR 3 (Del)

Note: In the opinion of the author, HC has not struck down the competency of parliament to levy service tax on construction in aforesaid case, by way of the deeming fiction. HC has only struck down the levy on the ground of absence of machinery provision.

The department may distinguish the aforesaid decision where two separate agreements are entered into – (1) for sale of undivided portion of land and (2) construction agreement. When 2 agreements are executed, there arises no composite contract for sale of undivided portion of land, buildings and services. Since value of undivided portion of land is separately ascertained, the construction agreement, in the opinion of author would fall under scope of works contract and R.2A of Valuation Rules, 06 (prior to and post 1.7.12) provide for valuation mechanism for exclusion of material portion from works contract in such a scenario.

The legislature in its wisdom has determined 25% as value of service prior to 1.7.12 and 25%/ 30% (at present 30%) as value of service post 1.7.12 where gross value includes value of land, materials and services (Respective notifications specifically state that value of land must be included in gross value).

In such a circumstance, could it be still held that valuation mechanism for determining value of service has not been provided in case of a composite contract of land, material and goods merely because Valuation Rules (R.2A) does not deal with aforesaid composite contract?

Would Valuation Section - S.67(1)(i) treating gross amount received as value of consideration where consideration is received in money not apply? Once the government seeks to tax only 25%/ 30% of the gross amount received as value of service, does not a sufficient valuation mechanism exist when S.67 is r/w N.No.1/06 ST/ 26/12 ST?

Whether service tax department has power to audit assessee?

History: The Delhi HC in Travelite (India) V. UOI, 2014 (35) STR 653 (Del) held that provision for general audit u/r 5A(2) of STR, 94 was **ultra vires** rule making power granted to CG u/s 94.

Thereafter, Legislature inserted sub section (2)(k) to S.94, granting CG rule making power for imposition of duty for furnishing information, keeping records and manner of verification of such records. Rule 5A(2) was amended by inserting new rule wef 5.12.14.

Thereafter CBEC issued circular no.181/7/14 ST on 10.12.14, clarifying that the term 'verification' in S.94(2) (k) was of wide import and included audit by departmental officials within its scope. Therefore officers of the



ST department could proceed with conducting the audit as before.

Decision: Delhi HC held that contention of revenue that consequent to insertion of S.94(2)(k), **power to make R.5A(2) now available with CG was not acceptable.** Audit being a specialised function is different from verification and cannot be carried out by departmental officials.

Rule-making power cannot be extended to include power not given by legislature. Amended R.5A(2) being in excess of legislative delegation, is ultra vires FA, 94 and **hence quashed.**

Amended R.5A(2) is beyond statute in demanding cost audit reports and income tax audit reports in addition to records as required to be maintained u/r 5(2). This makes amended R.5A(2) go beyond FA, 94 and hence **ultra vires.**

R.5A(2) envisaging audit by CAG is **contrary to constitutional provisions** since function of CAG is to audit accounts of public sector undertakings. To expect CAG to audit records of assessee would be **extraordinary.**

Audit Manual – CBEC Circular No.181/7/2014 ST dt.10.12.14 and 995/2/2015-CX dt.27.2.15 - New manual and fresh instructions issued setting up mechanism for audit and scrutiny of documents (consequent to quashing of earlier manuals and instructions in Travelite case) is without mandate of FA, 94 and hence aforesaid new manual and fresh instructions cannot be sustained.

Mega Cabs Pvt Ltd V. UOI, 2016 (43) STR 67 (Del)

Whether Service Tax leviable on Admission to Entertainment Events or Access to Amusement Facility?

History: Access to Entertainment Event or to Amusement was covered in negative list of services. FA, 2015 wef

1.6.15 excluded the aforesaid activity from the list of negative services.

The Appellant challenged levy of service tax on sale of IPL tickets, on the ground that service tax was not leviable on entertainment since tax on entertainment was a State Subject under Delhi Entertainment and Betting Tax Act, 96

The HC passed interim orders and directed the petitioner to deposit the tax with government, since it had already collected service tax, subject to final outcome of the writ petition.

GMR Sports Pvt Ltd V. UOI, 2016 (43) STR 167 (Del)

Note: Entry No.62 of List II to VII Sch of the Constitution read as follows: *Taxes on Luxuries, including taxes on entertainments, amusements, betting and gambling. Hence state government has the power to tax entertainments.*

However admission to entertainment event, access to amusement facility, is a separate 'aspect of taxation' distinct from entertainment/ amusement itself.

Be that as it may, no machinery provision has been provided for determining the value of admission/ access to entertainment/ amusement facility when a single value is paid to the entertainment/ amusement facility.

Whether state insurance department established for providing life insurance to employees of state government liable for service tax?

Life insurance service was provided by state insurance department pursuant to Kerala Service Rules. Kerala HC held that since CBEC Circular No.89/7/06 ST clarified that activities of sovereign/ public authorities discharged by state government department under law were mandatory and statutory functions, the aforesaid activity of the state insurance department was not liable to service tax.

UOI V. Kerala State Insurance Department, 2016 (43) STR 173 (Ker)

Note: Circular No.192/2/16-ST was clarified that activity by Government/ Local Authority against a consideration constitutes a service and that it was immaterial whether such activities were undertaken statutorily or mandatorily and are liable to tax. The aforesaid circular also withdraws Circular No.89/7/06-ST.

In the opinion of the author, Statutory/ Sovereign/ Mandatory services by Government/ LA are not first not in the nature of contracts, since it is in the nature of duty of Government/ LA and not undertaken at the desire of the other person. Hence the 'activity is not undertaken for another' as required by S.65B(44) (definition of service). Consequently fee paid would not constitute consideration.

Whether service recipient has locus standi to challenge levy?

The Madras HC held that person to whom burden of tax is ultimately passed on is not entitled to challenge the levy since every citizen would be a consumer of service and millions of consumers would become entitled to challenge the levy.

N. Bala Baskar V. UOI, 2016 (43) STR 161 (Mad)

Note: As per proviso (e) to S.11B(2) of CEA, 44, ultimate buyer/ service recipient (for FA, 94) may apply for refund, subject to unjust enrichment. Further tax paid under mistake of law, where the CG/SG has no authority to collect tax is liable to be refunded to ultimate buyer/ service recipient. When such is the case, should the buyer/ service recipient not be provided locus standi to challenge levy especially when they would be entitled to refund (if borne by them), if the levy is ultimately set aside.

Whether contract to produce

programs to an overseas entity, which beams the program back to India tantamount to export of service?

The Appellant was a television 'program producer' u/s 65(86)(b), taxable u/s 65(105)(zzu). The Appellant contracted with overseas entity in its capacity as program producer.

Department held that usage condition, currency condition was not satisfied since programs were to be distributed to viewers in India through channels in India and the contract designated currency of payment as INR.

The Tribunal held that production of program (by appellant) and further dissemination of program after delivery of program to overseas entity are separate and distinct services.

Tribunal held that usage of program after delivery to overseas entity (in this case overseas entity beamed programs back to India) is irrelevant for deciding the tax liability/ export of service under 'program producer' service.

The Tribunal rejected the revenue's contention to blur the distinction between program delivered by the Appellant abroad and subsequent broadcasting of the program by overseas entity. Hence service of Appellant was treated as exported.

Though contract designated payment in INR, it was noted that this was resorted to so that the service provider is not put to loss on account of currency fluctuations. A certificate from bank was submitted indicating inward remittance from overseas entity in convertible foreign exchange. Hence though consideration was in INR, transaction treated as export of service.

CST V. Balaji Telefilms Ltd., 2016 (43) STR 98 (T)

Note: Aforesaid decision is rendered in the context of Export of Service Rules, 05. Post 1.7.12, facts would have to be examined under Place of Provision of Service Rules, 12

Whether input service needs to be reversed if service provider undertakes trading activity?

Input services were commonly used for trading in 'packaged software' and other output services. Revenue contended that credit attributable to trading was not available.

Tribunal held that trading of goods was not an exempted service (as per R.2(e) of CCR, 04) prior to 1.4.11 amendment. Tribunal noted that the said amendment was also not retrospective.

However Tribunal relied on Mercedes Benz India Pvt Ltd case, 2014 (36) STR 704 (T) which held that credit was

not available on input service not attributable to 'output service'. Tribunal in the present case held that since trading was not output service, hence credit attributable to trading was liable to be reversed.

Delcam Software India Pvt Ltd V. CCE, 2016 (43) STR 103 (T)

Whether service tax registration necessary for availment and refund of unutilized Cenvat Credit?

The Karnataka HC held that service tax registration is not necessary for availment and refund of unutilized credit. That there was no rule/ provisions making registration as a condition precedent to availment/ refund of unutilized credit.

CST V. Tavant Technologies India Pvt Ltd., 2016 (43) STR 57 (Kar)

Whether SCN can be issued without quantification of tax liability?

No details were given in SCN of unpaid service tax. In the absence of the said detail, assessee remains in dark about nature and extent of his liability. Therefore SCN without quantification and merely of general nature making fishing enquiry, for which demand was confirmed was set aside.

CCE V. Gujarat Container Ltd., 2016 (43) STR 90 (Guj)

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Hong Kong – Macau
5 Days / 4 Nights



Cities Visited : **Hong Kong, Macau.**

ATTRACTIONS FOR WHICH ENTRY FEES ARE INCLUDED IN TOUR COST: HONG KONG & MACAU

Full day Ocean Park tour (with Meal Coupon)
Full day Disney Land tour (with Meal Coupon)
Hong Kong–Macau–Hong Kong Transfers by Ferry
One-way Tram Ticket to Victoria Peak
Visit to Madame Tussuads with Entry Fees

TOUR HIGHLIGHTS: HONG KONG

Visit to Ladies Market
Night View at Waterfront
Full day Ocean Park tour (with Meal Coupon)
Full day Disney Land tour (with Meal Coupon)
Hong Kong Island Tour with guide including visit to Repulse Bay beach
One-way Tram Ticket to Victoria Peak
Visit to Madame Tussuads with entry fees

TOUR HIGHLIGHTS: MACAU

Hong Kong–Macau–Hong Kong Transfers by Ferry
Macau City Tour
Visit to Macau Grand Prix Museum
Visit to Wine Museums
Night Tour of Macau Including Visit to Casino

Reporting Day: Wednesday 18th January 2017

22.30 hrs Report to Bangalore International Airport
23.30 hrs Check in for **Cathay Pacific Flight CX 5153 to Hong Kong**
01.30 hrs Departure by Flight **Cathay Pacific Flight CX 5153**
19th Jan 2017

09.25 hrs Arrival Hong Kong International Airport on **19th Jan 2017**

Date of Returning : 23rd Jan 2017 returning to Bengaluru.



TOUR COST

Per Adult on Twin/Triple Sharing basis	Child with additional bed sharing room with 2 adults	Child without additional bed sharing bed with parents
Rs. 80,000/-	Rs.70,000/-	Rs. 62,000/-

The above tour cost includes the Government Service Tax of 4.50%

The above Tour cost is for all guests who confirm the Tour and pay advance amount of INR. 26125 Per Person on or before 31st Oct. 2016.

All guests who pay advance amount on or after 31st Oct. 2016 will pay additional Tour Cost of INR. 3000+GST of 4.5%.

TOUR COST INCLUDES

- Air ticket and Airport tax from Bangalore and Return by Cathay Pacific in Economy class.
- Travel Insurance for the Duration of the Tour.
- 3 Nights Hotel accommodations with Breakfast in Hong Kong on Twin/Triple Sharing basis
- 1 Night Hotel accommodations with Breakfast in Macau on Twin/Triple Sharing basis
- Meal plan as indicated in the itinerary
- All transportation by Luxury Executive Coach
- All sightseeing as mentioned in the itinerary with the entry fees on private basis
- Airport transfers at Destination on private basis
- The services of English Speaking Guide
- All tips
- 1000ML Water bottle per person per day

Tour is Organised by:



TOUR COST EXCLUDES

Any other services not mentioned under inclusions. Optional Tour Cost:
Dancing on the Waters Show.

3 Types of Tickets available and entry Tickets are as below.

Category 1: USD 128

Category 2: USD 110

Category 3: USD 90

Contact for Registrations:

Ms. Geetanjali, 81477 33791

For more details about Tour please contact:

CA. Shravan Guduthur

Secretary, Bangalore Branch of SIRC of ICAI

+91 98445 46161

Inana Pragathi

- Seek Knowledge, Gain Progress
Two Day Karnataka State Level CAs' Conference



Invocation
Ms Pranati P Kumar &
Ms Poojitha R



Inauguration



Shri. R V Deshpande,
Hon'ble Minister for
Industry, Karnataka



Shri N R Narayana Murthy,
Founder, Infosys Ltd.



CA M Devaraja Reddy,
President, ICAI



CA. Phalguna Kumar E,
Chairman, SIRC of ICAI



CA. Pampanna B E,
Chairman,
Bangalore Branch



CA Shravan Guduthur,
Secretary,
Bangalore Branch



CA. Geetha A B,
Vice Chairman,
Bangalore Branch



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Central Council Member, ICAI

CA A Shankar

CA. K Gururaj Acharya

CA. H Padamchand Khincha



CA. Sunil Gabhawalla

Mr. Sharad Sharma,
Co-founder & Governing
Council Member, iSPIRT foundation

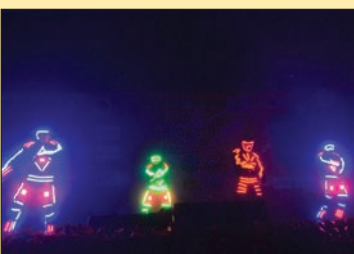
Moderator
CA. Sanjay M Dhariwal

CA. Madhukar N Hiregange,
Central Council Member,
ICAI

CA. Ashok Raghavan

CA. S Vishnumurthy

CA. Suresh Kris





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- ◆ Electronics & Communication Engg.
- ◆ Computer Science & Engg.
- ◆ Chemical Engg.
- ◆ Industrial Engg. & Management
- ◆ Electronics & Instrumentation Engg.
- ◆ Information Science & Engg.
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- ◆ Medical Electronics
- ◆ Bio-Technology
- ◆ Bachelor of Architecture

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- ◆ Digital Communication
- ◆ Computer Integrated Manufacturing
- ◆ Industrial Engg.
- ◆ Bio- Technology
- ◆ VLSI Design & Embedded Systems
- ◆ Computer Networking Engg.

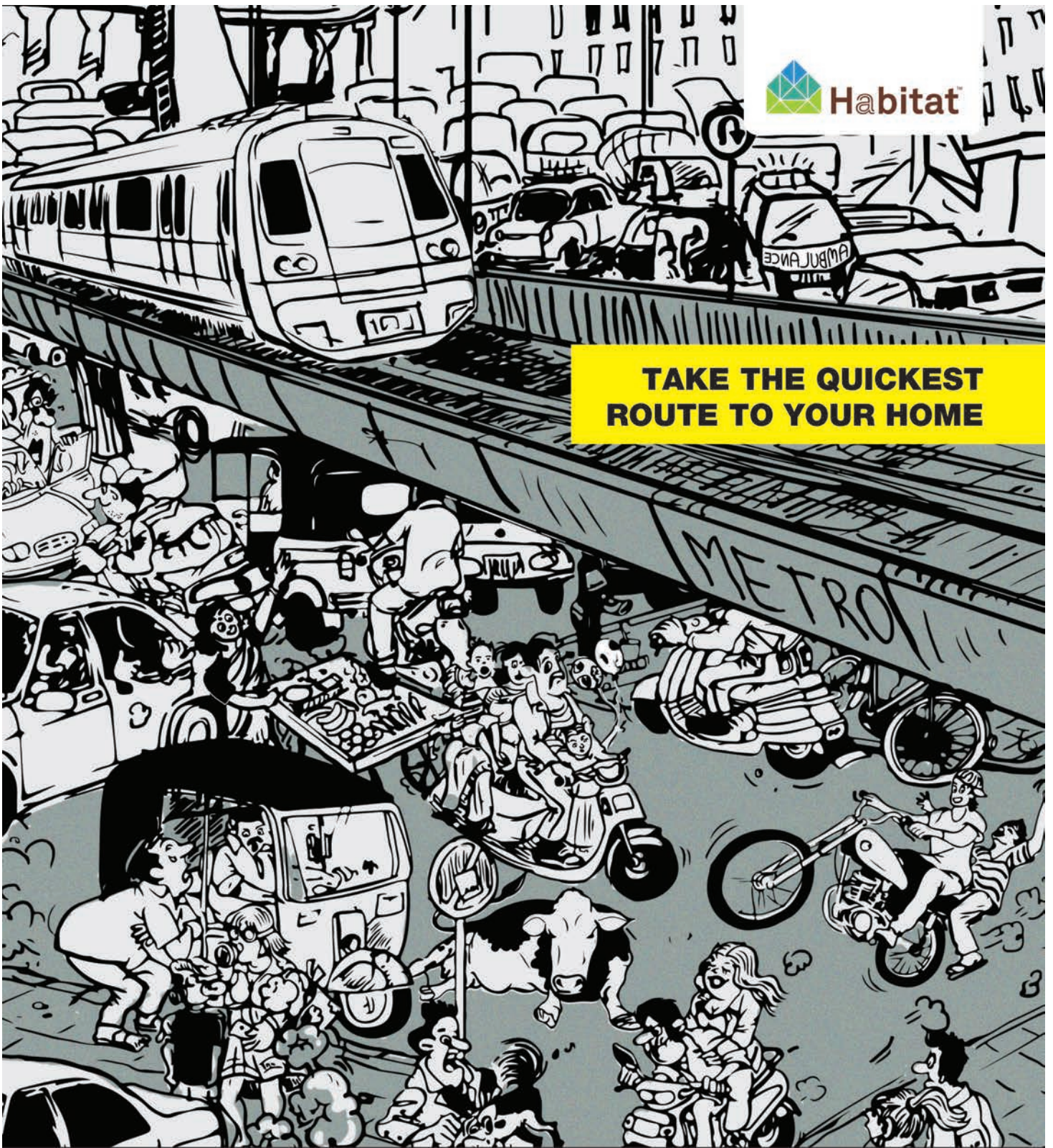
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- ◆ Chemistry
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- ◆ Mathematics
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- ◆ Information Science & Engg
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**MSR Nagar, MSRIT Post, Bengaluru - 560 054, Email: principal@msrit.edu, Web: www.msrit.edu
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*Considering 30 month for project completion. Conditions Apply. Images displayed are artistic representation only.

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BAPS Swaminarayan Sansthan,
Akshardham, New Delhi



Ms Nutan Wodeyar,
Principal Chief Commissioner
of Income Tax,
Karnataka & Goa Region



AGM



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CA. Rishi Harlalka



CA Pramod S

