



# Bangalore Branch of SIRC e-Newsletter

*English Monthly*

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## At the Helm of Affairs



**CA. Nilesh Shivji Vikamsey**  
President, ICAI



**CA. Naveen N.D. Gupta**  
Vice-President, ICAI



**CA. Cotha S. Srinivas**  
Chairman, SIRC of ICAI

## Newly Elected Office Bearers - 2017-18



**CA. Bhat Shivaram Shankar**  
Secretary



**CA. Geetha A.B**  
Chairperson



**CA. Shravan Guduthur**  
Vice-Chairman



**CA. Raveendra S. Kore**  
Treasurer

- **Seminar for Women Chartered Accountants**  
on 11<sup>th</sup> March 2017



- **Seminar on Bank Branch Audit**  
on 25<sup>th</sup> March 2017



## Theme of the Year



# Chairman's Communique . . .



***"The future belongs to those who believe in the beauty of their dreams" - Eleanor Roosevelt***

## **Dear Professional Colleagues,**

I feel extremely elated and privileged to pen this message as the first lady chairperson of the largest branch of ICAI in its history of last 55 years, since its inception. I feel really humbled, as nothing could be more contenting to me than to serve this noble profession. It would be my earnest endeavor to contribute to this mighty institution and to strive to be of value to the profession. I have confidence in the collective wisdom of all my professional colleagues and I assure you all that we will work as a team for the betterment of the branch.

I am thankful to all the members for electing me to this coveted position and which has placed colossal responsibility to steer the branch ahead. My predecessors in the current term have served the branch to the best of their abilities and I salute all our past chairmen and their teams who have worked hard to bring our branch to the standards that we are today. The Bench mark which our branch has set is example and inspiration for others to look up to with respect and admiration. The best branch award received in yesteryears stand as a testimony of our achievements.

## **Our Torch Bearers:**

On behalf of Bangalore Branch of SIRC of ICAI, I congratulate and welcome our versatile leaders at the helm, our president, CA. Nilesh Shivji Vikamsey and the Vice President CA. Naveen N D Gupta. We are indeed delighted to have our seniors of the highest professional caliber and competence as our torch bearers. It is with great jubilation we acknowledge the fact that our own ardent member from Bangalore CA. Cotha S. Srinivas who has taken charge as a Chairman- SIRC. I on behalf of Bangalore branch compliment him for his new role at the regional council and wish him good luck. We at Bangalore branch reaffirm to work aligning with our leaders' vision and accelerate the growth of our branch under their able leadership and guidance.

## **Theme for the Year: Jignasa**

The term "Jignasa" means Quest for Knowledge. Jignasa invariably means desire to know and is the very base of knowledge which is an excited state that leads to understanding which is the beginning point of deeper knowledge. The intended knowledge is far beyond the limits of informative knowledge and has indicated direct realisation of identity as its goal.



'Knowledge', should be action-oriented to produce results. Knowledge must be sought for attaining the truth and excellence, thereby experience the real state of "Ya esha supteshu jagaruti".

"This year, it's our earnestly endeavor to quench the thirst of our professional comrades who seek to attain a greater level of knowledge".

As a CA professional, we have to be hungry for knowledge and we should keep ourselves abreast with the new developments in our domain. As rightly said "The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and re-learn." As a Chartered Accountant, I concur in these words of Alvin Toffler as Tax laws, Reporting Standards and Corporate Laws etc., are dynamic in nature and ever changing. We need to learn, un-learn and re-learn these almost on daily basis, no matter at what stage of profession we are. I also recall Mahatma Gandhi's words when he said: **"Live as if you were to die tomorrow, learn as if you were to live forever"**. These words of wisdom are worth emulating by all of us because our profession is also a process of life-long learning, acquiring knowledge and striving for excellence. Thus, as Chairperson- Bangalore Branch, I humbly request all my fellow professionals to keep updating themselves on routine basis.

The ensuing year 2017-18 is a very important one for the CA fraternity across India. We will witness the introduction of GST which will be a game changing reform for the Indian economy. As, we so often hear these days, this will be the year of unlearning and re-learning. The Branch Managing Committee has immense responsibility to see that the right topics are discussed and debated during the seminars organized by us. The Bangalore branch has always been led by very competent and committed professionals and we will strive to uphold and improve the standards set by our predecessors.

As a move to reinforce digital revolution; we at Bangalore branch have developed Office Management Software for ease of doing branch activities and also have planned to launch a mobile app for student and member of Bangalore branch of SRIC of ICAI.

## **Seminar for Women Chartered Accountants:**

March 08th is being celebrated as International women's day and we take pride to host one day seminar for women CAs organized by Women Members Empowerment Committee of ICAI on Saturday 11th March 2017. I sincerely request all women Chartered Accountants both in practice and profession to attend and make the event a grand success.

## **Bank Branch Audit Seminar:**

This month is also vital for Bank Branch Audit; hence we are organizing one day CPE seminar on Bank Branch Audit on Saturday 25th March 2017, we request members to participate in large number and disseminate the knowledge among your professional colleagues.

At the end of this communique, let me share my observation that what we need for continued growth and development of our profession, is your constructive suggestions and feedback, based on which we shall improve and improvise continuously.

I take this opportunity to wish all of you on the forthcoming festivals in the month of March – Ugadi and Holi and I sincerely hope that all of us will celebrate them with enthusiasm, respect and peace.

With kindest regards,

**CA Geetha AB**

Chairperson – Bangalore Branch ICAI

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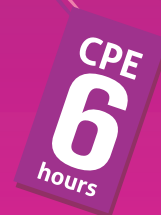


# Seminar for Women Chartered Accountants

on Saturday 11th March 2017 at 9.30am to 5.30pm  
at Chancery Pavilion, Bangalore

**Organised by:**  
Women Empowerment Sub-Group of CCBMP

**Hosted by:**  
Bangalore Branch of SIRC of  
The Institute of Chartered Accountants of India



Timings	Topics		Speakers
8.30am to 9.30am	Registration		
9.30am to 10.30am	<b>Inaugural Session</b>	<b>Chief Guest</b> Ms. Shobha Karandlaje <i>Former Minister For Rural Development &amp; Panchay Raj, Govt. of Karnataka, M.P</i>	<b>Guest of Honor: Motivational Speaker</b> CA. Shalini Pillay, <i>Partner &amp; Head- People Performance &amp; Culture, MNC</i>
10.30am to 11.45am	Special Session - <b>Professional Avenues for women CAs</b>		CA. Sripriya Kumar <i>Central Council Member, ICAI Chennai</i>
11.45am to 12.00pm	Tea Break		
12.00pm to 1.15pm	<b>Swalpa adjust madi – for your own peace of mind</b>		Dr. Sugami <i>Apollo Hospital, Bannerghatta Road, Bangalore</i>
1.15pm to 2.15pm	Lunch Break		
2.15pm to 3.30pm	<b>An overview of GST – the most radical reform in the area of - Indirect Taxes - Sought for topic of the day</b>		CA. Sowmya Suman <i>Associate Director In a leading MNC</i>
3.30pm to 3.45pm	Tea Break		
3.45pm to 5.00pm	<b>Fitness, Image Branding and self-grooming</b>		Mrs. Sneha Shergill <i>Mrs. India – 2016</i>

**Programme Chairman**  
Chairman, CCBMP, ICAI  
Convener, WMEG, CCBMP, ICAI

**Programme Co-Chairman**  
Vice-Chairman, CCBMP, ICAI  
Deputy Convener, WMEG, CCMP, ICAI

**CA Geetha A B**  
*Chairperson*  
Bangalore Branch of SIRC of ICAI

**CA Divya S**  
*Committee Member*  
Bangalore Branch of SIRC of ICAI

**CA Bhat Shivaram**  
*Secretary*  
Bangalore Branch of SIRC of ICAI

**Co-Ordinators**  
CA. Kishori S Patil, CA. Sandhya P Nagar, CA. Shilpa G B, CA. Sanjana Hegde

**Delegate Fee for Members: ₹ 500/- (Includes Delegate Kit, Memento)**  
Mode of Payment: Cash/Cheque/DD in favour of "Bangalore Branch of SIRC of ICAI", payable at Bangalore

**For Registration, please contact:**  
Ms.Geetanjali D. Tel: 080-30563513/500 | Email: blrregistrations@icai.org | Website:www.bangaloreicai.org

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## CALENDAR OF EVENTS - MARCH 2017

Date/Day/ Time	Topic / Speaker	CPE Credit
01.03.2017 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Information Technology Act Compliance <b>Mr. Naavi Vijayshankar</b> , <i>Cyber Law Consultant income Tax - E filing</i> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
03.03.2017 Friday 6.00pm to 8.00pm	<b>Interactive Session on</b> Defective Returns and Demand Management <b>Shri. R K Mishra</b> , <i>IRS, Director of Income Tax</i> <b>CPC, Bangalore &amp; other officers</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
08.03.2017 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Corporate Decisions - Could have been decided the otherway <b>CA. Srilakshmi P</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
10.03.2017 Friday 6.00pm to 8.00pm	<b>Manthana - Professional Updates</b> GST Updates <b>CA. Annapurna D Kabra &amp;</b> <b>Sri. K S Basavaraj</b> , <i>Joint Commissioner of Commercial Taxes- E-Audit</i> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
11.03.2017 Saturday 9.30am to 5.30pm	<b>Seminar for</b> <b>Women Chartered Accountants</b> Delegate Fee: <b>Rs.500/-</b> <b>VENUE:</b> The Chancery Pavilion Hotel, #135, Residency Road, Bangalore - 560 025	<b>6 hrs</b>



## CALENDAR OF EVENTS - MARCH & APRIL 2017

Date/Day/ Time	Topic / Speaker	CPE Credit
15.03.2017 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> MAT & Ind AS Implication <b>CA. Rahul Chowdhary</b> VENUE: Branch Premises	 2 hrs
17.03.2017 Friday 6.00pm to 8.00pm	<b>Manthana - Professional Updates</b> on Direct Taxes <b>CA. Prem Raj Rathod</b> VENUE: Branch Premises	 2 hrs
18.03.2017 Saturday 5.00pm to 8.00pm	<b>Case Studies on</b> Revenue Recognition Under Ind AS - Impact on different Sectors <b>CA. Mohan R Lavi</b> Delegate Fee: <b>Rs.250/-</b> VENUE: Karnataka State Hockey Association, Rhenius Street, Langford Town, Bangalore-560025	 3 hrs
21.03.2017 Tuesday 5.00pm to 8.00pm	<b>Hands on Training</b> using Excel in Bank Audit <b>CA. H Shivakumar</b> Delegate Fee: <b>Rs.500/-</b> (Computers will be provided by the Branch) VENUE: ICAI Bhawan, No. 29/1, Race Course Road, Next to Sugama Travels, Bangalore	 3 hrs
22.03.2017 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Internal Control over Financial Reporting <b>CA. R Sharmila</b> VENUE: Branch Premises	 2 hrs
24.03.2017 Friday 6.00pm to 8.00pm	<b>Updates on</b> Karnataka State Budget 2017 <b>CA. Sanjay M Dhariwal</b> VENUE: Branch Premises	 2 hrs
25.03.2017 Saturday 9.45am to 5.45pm	<b>Seminar on</b> <b>Bank Branch Audit</b> Delegate Fee: For Members - <b>Rs.2100/-</b> Details in Page No. 33 VENUE: Hotel Le - Meridien, Sankey Road, Bangalore	6 hrs
05.04.2017 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> An insight into General Anti Avoidance Rules (GAAR) <b>CA. Sandeep Jhunjunwala</b> VENUE: Branch Premises	 2 hrs
12.04.2017 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Critical Issues and Latest Updates-Taxation of E-Commerce <b>CA. Sachinkumar B P</b> VENUE: Branch Premises	 2 hrs

DCO ACTIVITY: CALENDAR OF EVENTS - MARCH 2017		
Date/Day/ Time	Topic / Speaker	CPE Credit
03.03.2017 Friday	<b>Live Webcast on</b> Technology in GST (Presently used in Accounting, comparison between other softwares etc) + Transational Challenges in IT, Area of Changes in IT <b>Committee - Indirect Taxes Committee</b> <b>CA. A Rafeeq &amp; CA. Venugopal Gella</b> <b>VENUE:</b> Branch Premises	 <b>3 hrs</b> Unstructured
5.00pm to 8.00pm		
07.03.2017 Tuesday	<b>Live Webcast on</b> Accounts and Records Payment of Tax (Interest payable and recoupable/ adjustment for excess/ Transitional Provisions) Tax Invoice, Supplementary Invoice, Debit and Credit Notes <b>Committee - Indirect Taxes Committee</b> <b>CA. Sandesh &amp; CA. Harish Jain</b> <b>VENUE:</b> Branch Premises	 <b>3 hrs</b> Unstructured
5.00pm to 8.00pm		
11.03.2017 Saturday	<b>Live Webcast on</b> Common Errors in IDT- To correct prior to GST including Live queries <b>Committee - Indirect Taxes Committee</b> <b>CA. Jatin Christopher &amp; CA. Rajesh Kumar T R</b> <b>VENUE:</b> Branch Premises	 <b>3 hrs</b> Unstructured
5.00pm to 8.00pm		
11.03.2017 Saturday	Faculty Identification Programme <b>Committee - Indirect Taxes Committee</b> <b>VENUE:</b> RCR Premises	—
9.00am to 6.00pm		
18.03.2017 Saturday	Campus Placement Programme (I) - March 2017 <b>Pre Placement Talk (PPT)</b> <b>VENUE:</b> Hotel Fortune JP Cosmos	—
20.03.2017 Monday	Campus Placement Programme (I) - March 2017 <b>Written Test Day</b> <b>VENUE:</b> Hotel Fortune JP Cosmos	—
21.03.2017 Tuesday	Campus Placement Programme (I) - March 2017 <b>Orientation Programme</b> <b>VENUE:</b> Hotel Fortune Park JP Celestial	—
22.03.2017 Wednesday	Campus Placement Programme (I) - March 2017 <b>Interview Day 0</b> <b>VENUE:</b> Hotel Bangalore International	—
23.03.2017 Thursday	Campus Placement Programme (I) - March 2017 <b>Interview Day 1</b> <b>VENUE:</b> Hotel Bangalore International	—
24.03.2017 Friday	Campus Placement Programme (I) - March 2017 <b>Interview Day 2</b> <b>VENUE:</b> Hotel Bangalore International	—
25.03.2017 Saturday	Campus Placement Programme (I) - March 2017 <b>Interview Day 3</b> <b>VENUE:</b> Hotel Bangalore International	—
27.03.2017 Monday	Campus Placement Programme (I) - March 2017 <b>Interview Day 4</b> <b>VENUE:</b> Hotel Bangalore International	—



## IMPORTANT DATES TO REMEMBER DURING THE MONTH OF MARCH 2017

Due Date	Statute	Compliance
5 <sup>th</sup> March 2017	Excise	Monthly Payment of Excise duty for the month of February 2017
	Service Tax	Monthly Payment of Service tax for the month for February 2017
6 <sup>th</sup> March 2017	Excise	Monthly E- Payment of Excise duty for the month of February 2017
	Service Tax	Monthly E- Payment of Service Tax for the month of February 2017
7 <sup>th</sup> March 2017	Income Tax	Deposit of Tax deducted / collected during February 2017.
10 <sup>th</sup> March 2017	Excise	Monthly Performance Reports by Units in EOU, STP, SEZ for February 2017.
15 <sup>th</sup> March 2017	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended February 2017 (for Composition Dealers).
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended February 2017.
	Provident Fund	Payment of EPF Contribution for February 2017 (No grace days).
		Return of Employees Qualifying to EPF during February 2017.
		Consolidated Statement of Dues and Remittances under EPF and EDLI For February 2017.
		Monthly Returns of Employees Joined the Organisation for February 2017.
		Monthly Returns of Employees left the Organisation for February 2017.
	Income Tax	Payment of Advance tax (100% of tax on total income) for all assesseees for the A.Y 2017-18.
20 <sup>th</sup> March 2017	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During February 2017.
	Professional Tax	Monthly Returns and Payment of PT Deducted During February 2017.
21 <sup>st</sup> March 2017	ESI	Deposit of ESI Contribution and Collections of February 2017 to the credit of ESI Corporation.
31 <sup>st</sup> March 2017	Service Tax	Monthly/Quarterly E- Payment of Service Tax for the month of February 2017
	Excise	E-Payment of Excise Collected During March 2017
	Income Tax	Filing of Income Tax returns without any penalty under section 271F of the act for the assessment year 2016-17
		Last date for filing of belated return for the assessment year 2015-2016.
		Last date for filing of revised return (Voluntary) for the assessment year 2015-16 (Section 139(4))

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

EDITOR :  
**CA. GEETHA A.B**

SUB EDITOR :  
**CA. BHAT SHIVARAM SHANKAR**

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# IT-ENABLED AVENUES FOR CAs IN GST

CA A. Rafeeq, FCA, CISA, CGEIT, CIA

## GST Journey and GSTN

The journey of Goods and Services Tax (GST) which started more than a decade ago is in its last mile as the regulations are getting legislated by the Government at centre and all the states. The GST is proclaimed to be the greatest tax reform in India. However, what is not generally recognised is that implementation of GST is also the biggest reform of compliance automation in terms of scope, size, regularity and level of interaction between the Government and tax payers for the business transactions. Technology is the building block which is facilitating the implementation of GST in India not only for the Governments but also for various stakeholders who have to comply with the law. This will require a paradigm shift by all stakeholders including tax payers and professionals as they have no option but to use technology to interface and interact with the GST Network (GSTN) and through GST Suidha Providers (GSP) and Application Software providers (ASP).

The GSTN has been made responsible to build and operationalize this system as the only national agency. As GST gets implemented, GSTN is expected to become a trusted National Information Utility (NIU) which provides reliable, efficient and robust IT Backbone for the smooth functioning of the GST regimen enabling economic agents to leverage the

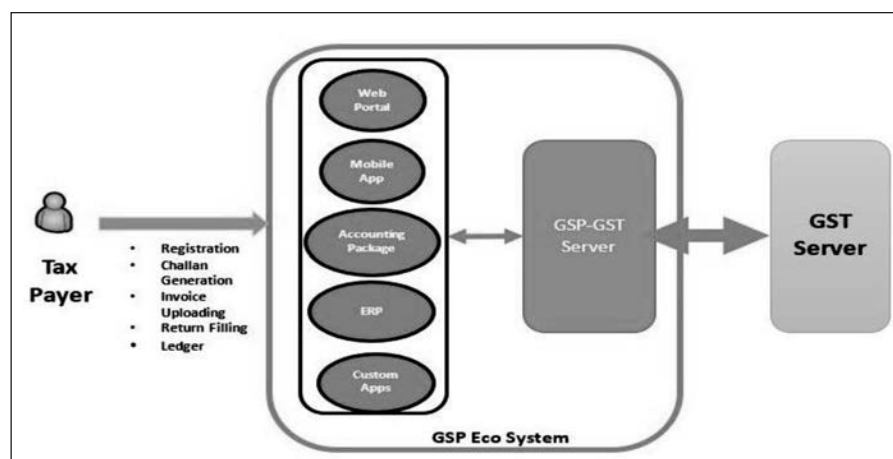
entire nation as One Market with minimal Indirect Tax compliance cost. Some of the key services provided by GSTN are:

- Provide common and shared IT infrastructure and services to the Central and State Governments, Tax Payers and other stakeholders for implementation of GST.
- Provide common Registration, Return and Payment services to the Tax payers.
- Partner with other agencies for creating an efficient and user-friendly GST Eco-system.
- Encourage and collaborate with GST (GSPs) to roll out GST Applications for providing simplified services to the stakeholders.

The following diagram provides an overview of different types of interaction which tax payers will have with the GSTN using various interfaces ranging from website portal to custom applications.

## GST and Automation

The GST law is complex in its various manifestations as applicable taxes for different type of transactions are quite different from existing laws and there is new provision of input credits being available based on compliance/payment by the supplier. However, technology can simplify the complexity of GST compliance. Technology is the key for success as GST is a transaction based technology driven compliance which requires matching of credit at various stages until it reaches the end user. The GSTN is not only a 'Business to Business' but a 'Business to Government' data exchange. The triangulation of Business records of supplier and buyer with GSTN on monthly basis is a fundamental pre-requisite of GST compliance and this makes it imperative to use automation.





### **Services by CAs in GST**

Chartered Accountants will play a very critical role in facilitating not only the transition to GST but also in ensuring continuous compliance for their clients. Some of the key services which can be provided by Chartered Accountants in the area of GST are as follows: (These are only illustrative).

#### **Implementation Services**

1. Assessment of various types of goods / services and appropriate classification based on HSN / SAC Code
2. Creation / reclassification / re-grouping of Chart of accounts in ERP
3. Creation of Masters & Templates for capturing data including developing Standard Operating Procedures (SOP)
4. Creation, validation & enabling capturing of data for State-wise Input Credit, Central and Inter-State Credit
5. Identification & reporting additional transactions which fall within the meaning of Supply as per GST laws like Stock Transfers etc.
6. Creation and design of various types of Reports relating to purchases, sales and GST
7. Services such as data migration, configuring systems as per GST requirements, transition from existing to new systems, MIS for GST for ensuring pro-active compliance, facilitating auto-reconciliations, data integration between Head office and branches, automation of filing of returns, services of GST compliance and related accounting and compliance services

#### **Advisory Services**

1. Relating to interpretation and implementation of law as applicable, eligibility of input credit, etc.
2. Relating to the pricing of the products / services for ensuring prices are competitive.
3. Helping the taxpayers in resolving tax related issues.

#### **Compliance Services**

4. Acting as a mediator and help the taxpayers in registration, payment, submission of returns, etc.
5. Facilitate filing of returns and ensuring matching of appropriate tax credits
6. Reconciliation of books with GST transactions

#### **Assurance Services**

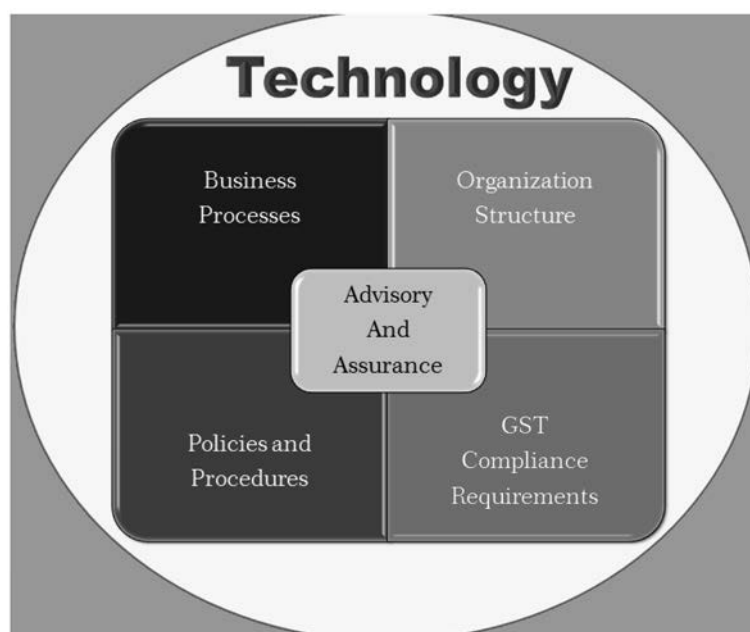
1. For testing of application software including ERP configurations.
2. At pre-implementation, implementation and post-implementation stage including re-

modelling business structure.

3. Testing of application software at different stages such as pre-implementation implementation and post-implementation.
4. GST Audit on annual basis or as part of internal audit.

### **Technology and Compliances**

Earlier, business embedded technology but in a modern enterprise, technology embeds business as all mission-critical business processes, organisation structure, policies and procedures and compliance requirements are embedded and facilitated through Technology. GST compliance requirements have to be embedded inside technology through different aspects of application software and ASP. Hence, CAs have to understand various layers of technology and more specifically multiple gateways of application software and ASP. CAs can play a major role in ensuring that Technology is effectively used to simplify the process of automating GST compliance.



### **Critical components of GST**

The critical components of GST such as registration, taxability, supply, place of supply, time of supply, returns, payments, etc. are all facilitated and processed through Application Software. Further, the transition to GST requires enterprises to conduct detailed review of existing business processes, system of credits, carry forwards, stock on hand, transactions under processing, contracts to be fulfilled, treatment of refunds, etc. Apart from providing advisory services regarding interpretation and application of GST for the enterprise, CAs can also provide advisory services by proactively conducting a GST impact study. This involves review of how existing business processes and compliance requirements are mapped in the information systems and suggest required changes to be implemented to ensure smooth transition to GST. Further, CAs can also provide detailed recommendations on specific changes to be made in the existing application software to ensure conformance to GST requirements. They can also perform detailed testing of changes in application through the stages of design, development, implementation and post-implementation. Each of these could be a separate or composite assignment.

### **GST Impact Study**

A generic approach of doing a GST impact study which can be adapted as per specific requirements of the assignment is given below. This is not comprehensive but only illustrative.

#### **1. Understand the current IT environment and application software**

The first step is to obtain understanding of the IT environment of the enterprise, specifically the application software and information Systems used for processing of transactions. This will provide understanding of the current Information Architecture and how information is originated, initiated, processed and accessed across at different stages. The Application Software which processes all the business transactions could belong to following categories:

- Standard ERP Software of different size and scope (simple to complex),
- Industry-specific software (specific verticals)
- Utility Software (specifically built for GST compliance)
- Customised software developed in-house or procured from vendors.

Depending on the category and type of application software, the approach to GST compliance could vary. In case of standard and industry-specific software, vendor may include GST features, and then focus would be on testing whether features are adequate and are properly mapped to enterprise requirements. In case of custom-built software, GST features have to be added or done by using utility software. In such a case, GST features required for enterprise have to be prepared and tested to ensure compliance.

#### **2. Mapping Business Processes and GST Compliance requirements**

The constitution of the entity, type of business processes and transactions which are facilitated through existing information systems (both manual and automated) have to be studied

to map what is required as per GST, current features, identify gaps between the two and provide appropriate recommendations. Some examples of key business processes to be reviewed are briefly explained.

- a. Procure to Pay (P2P): P2P is the process of obtaining and managing the raw materials needed for manufacturing a product or providing a service. It involves the transactional flow of data that is sent to a supplier as well as the data that surrounds the fulfillment of the actual order and payment for the product or service. The changes required in each of the sub processes of this process covering entire life-cycle from point of order to payment have to be studied to identify gaps and provide recommendations.
- b. Order to cash (OTC or O2C): O2C is a set of business processes that involve receiving and fulfilling customer requests for goods or services. It is a set of business processes that involve receiving and fulfilling customer requests for goods or services. There are multiple sub-processes such as receipt of customer order, fulfilment of order or service by scheduling it, shipping of order/providing service, generation of invoice/delivery note, collection from customer and recording of transactions at different stages. The specific sub processes as applicable to the enterprise have to be studied and specific GST compliance applicable at each of the stages have to be



identified and mapped, followed by specific recommendations for changes required.

- c. **Inventory Cycle:** The Inventory Cycle is a process of accurately tracking the on-hand inventory levels for an enterprise. An inventory system should maintain accurate record of all stock movements to calculate the correct balance of inventory. To businesses that buy, store and sell inventory it focuses on the process of understanding, planning and managing inventory levels, from purchasing through more-efficient auditing. The impact of GST on existing inventory cycle have to be studied and recommendations provided covering both transition and changes in information systems.
- d. **General Ledger (GL):** GL process refers to the process of recording the transactions in the system to finally generating the reports from financial transactions entered in the system. The input for GL Process Flow is the financial transactions and the outputs are various types of financial reports such as balance sheet, profit and loss a/c, funds flow statement, ratio analysis, etc. CAs should study the existing GL processes covering the complete transaction processing cycle such as company creation, setting of configuration, creation and Updation of master, processing of transaction, generation of reports, filing of returns and payments.

Based on study and walk-through, gaps and additional requirements for ensuring GST compliance have to be provided as recommendations.

#### **Re-modelling of business structure**

As stock transfer is also treated as supply under GST, enterprises may have to re-look at their business model and decide whether to continue existing branches or set up new location across local state borders. Further, the option of creating separate divisions in case of different business verticals within state may have to be explored. If an enterprise has different type of business verticals within state, then this would require separate registration in GST regime, the enterprise may have to divide its divisions in ERP software. However, the risk of duplication of ledgers, Vendor master, Customer master & Tax master have also to be considered.

#### **GST & IFC Mapping**

The Companies Act, 2013 has brought a new requirement for all corporates to have internal financial controls in place and auditors must comment on the efficiency and effectiveness of such controls. In the GST regime, the business processes such as Order to Cash, Procure to Pay, Inventory, Reporting, etc. require a detailed review to re-assess how the processes work, compliances applicable, new risks due to GST and whether enterprise has implemented required controls to mitigate these risks.

#### **Using Data Analytics in GST**

The proposed GST system requires matching of tax credit not just bill by bill

but also based on each of the line-items of each of the invoice (where tax rates are different). GST requires uploading of all outward supplies, all the inward supplies every month and matching the credits to identify mis-matches and communicate with relevant vendors. Data Analytics and CAATs could be useful for data analysis, MIS and identifying and reconciling the mis-matching so that remedial measures can be taken. CAs must consider using Data Analytics software which have inbuilt features for invoice matching, analysis of purchases and sales with standard templates for GST compliance so that these services can be provided using automation.

#### **Summary**

GST is a game-changer for ensuring compliance of commercial transactions. Technology is a key enabler and the epicentre for the transformation to the new GST regime. Hence, it is critical for enterprises to understand the impact on compliance and changes required in their existing information systems. CAs can be catalyst and change-agent for ensuring smooth transition to GST by providing advisory and assurance services not only pertaining to interpretation of GST (traditional area) but also facilitate implementation and changes to information systems (new avenues) as required. GST is definitely a challenge but this can be converted as a big opportunity to provide IT-enabled GST compliance services. CAs will have to update their technological skills so that can deliver these new services to their clients. ■



## HIGHLIGHTS: UNION BUDGET 2017-18

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



The Union Budget 2017-18 was introduced by our Hon'ble Finance Minister Mr. Arun Jaitley on February 1, 2017. The Budget has been path breaking as not only was the same advanced to early February, the 92-year old practice of presenting the Railway Budget was also subsumed in the Union Budget.

Following are some of the changes proposed by the Hon'ble Finance Minister:

- Definition of Importer/ Exporter to be amended to include "Beneficial Owner". Beneficial owner would mean any person on whose behalf goods are imported or exported; or the person who exercises effective control over the goods imported or exported.
- The test of unjust enrichment not required when the duty is paid before the Order for Out of Charge is passed wherein excess payment is apparent from the bill of entry or the actual duty payable is evident from the re-assessed bill of entry.
- Mandatory for the person in charge of a conveyance that departs from India to a place outside India to deliver to the proper officer the details of the passenger and crew and passenger name record information of departing passengers before the departure of the conveyance. Failure to act accordingly may also attract penalty not exceeding Rs.50,000.
- Mandatory to file the bill of entry before the end of next day following the day (excluding Holidays) on which the vessel/ aircraft/ vehicle carrying goods arrives at the customs station at which the said goods are cleared for home consumption or warehousing.
- Co-noticee in Show Cause Notice allowed to approach the Settlement Commission wherein the application of the main noticee has either been settled or pending to be settled by the Settlement Commission.
- Settlement Commission empowered to rectify any error apparent on record in the Order passed by it.
- Special Additional Duty of 2% levied on import of populated circuit boards used in the manufacture of mobile phones.
- Basic Customs Duty levied on import of solar tempered glass reduced from 5% to Nil.
- Authority for Advance Ruling for Customs, Excise and Service Tax to be merged with that of Income Tax. The applications pending with the Authority for Advance Ruling to be transferred to the Authority for Advance Rulings under Section 245O of the Income Tax Act, 1961.
- Orders passed by the Authority for Advance Ruling to be pronounced within six months as against ninety days earlier.
- Research and Development (R&D) Cess, 1986 to be repealed w.e.f. 01.04.2017. Thus, the exemption from payment of Service Tax equivalent to R&D Cess under Notification No. 14/2012-S.T. dated 17.03.2012 would not be available and Service Tax to be paid at prevailing rate.
- One-time upfront amount (payment/ Salami) paid for long term lease of industrial plots for a minimum period of thirty years leased by State Government Industrial Development Corporation/ Undertaking to the Industrial Units exemption from payment of Service Tax.
- Life insurance services provided by the Army, Naval and Air Force Group Insurance Funds retrospectively from 10 September 2004 (with refund of tax earlier paid, if any) exempted from Service Tax.
- Exemption from service tax extended to all post graduate programmes conducted by IIMs.



- Retrospective amendment to clarify exclusion of value of property in land and undivided share of land from service portion in execution of works contract involving transfer of goods and land with effect from 1 July 2010.
- Specific period-wise valuation prescribed, in case gross amount charged includes value of goods as well as land or undivided share of land.
- Banking companies, financial institutions and NBFCs required to include value of services by way of extending deposits, loans or advances against consideration in form of interest or discount income for purpose of calculating exempted turnover.
- Time limit of three months (extendable up to six months on approval of Commissioner) fixed for disposal of application for transfer of CENVAT Credit in case of shifting of factory/business premises or change in ownership.
- Exemption restrictions on clearance by EOU to DTA not to apply for procurements of raw materials on duty free/concessional rate basis, subject to conditions
- The m-POS, micro ATM, finger print reader/ scanner and iris scanner have been exempted from all the taxes levied by the Central Government on import or domestic manufacturing. The parts of the above machines are also exempted from taxes if used in the manufacture of above equipment in India.
- CVD exemption extended to the silver medallions and coins, having silver content not less than 99.9 per cent has been withdrawn.

The Budget on the whole is in line with the earlier policies of the Government of "Make in India", "Digitization" and "Simplification of Tax Administration". Determined to implement GST from July 1, 2017, no significant changes were announced in Indirect Legislations. The Industry now awaits the final GST law which is to be finalised in the next meeting of the GST Council.



### Genuine-A-Khatha-East-Facing Residential Plot for Sale

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<p><b>Save ₹ 25,000 / ₹ 30,000 (Senior Citizens)</b></p>		
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# COMPANY LAW - UPDATES – DEC' 16, JAN' 17 & FEB' 17

CA K. Gururaj Acharya



## 1. MCA Updates

### 1.1 Closure of place of Business by a Foreign Company

[Gen. Circular No. 01/2017 dtd 22.02.2017]

**S. 391 of Co's Act 2013 is reproduced below –**

- (1) The provisions of sections **34 to 36** (both inclusive) (**Criminal Liability for Misstatements in Prospectus, Civil Liability for Misstatements in Prospectus and Punishment for Fraudulently Inducing Persons to Invest Money respectively**) shall apply to –
  - (i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;
  - (ii) the issue of Indian Depository Receipts by a foreign company.
- (2) The provisions of **Chapter XX (Winding Up)** shall apply *mutatis mutandis* for closure of the place of business of a **Foreign Company in India as if it were a company incorporated in India**.

Clarification is provided that the provisions of *Sub-Sec. (1) and (2)* must be read harmoniously and that the **provisions of S. 391(2) will apply only to those Foreign Co's which have issued prospectus or IDR's (Indian Depository Receipts) pursuant to provisions of Chapter XXII of Co's Act 2013.**

### 1.2 Certificate of Incorporation (Form INC-11) issued by ROC to mention PAN of the company WEF 30.01.2017 (where if it is issued by the Income-tax Dept.)

[Co's (Incorporation) Amendment Rules, 2017 dtd 25.01.2017]

**Form INC-32 (SPICE – Simplified Proforma for Incorporating Co. electronically)** amended to include -

- a. Nominee details (*who shall become the member of the Co. in the event of Promoters death / incapacity to contract*)
- b. Additional Information for applying PAN & TAN (MANDATORY)
- c. Employees Provident Fund (EPF) details \*
- d. Employees State Insurance (ESI) details \*
- e. Importer Exporter code \*
- f. Particulars of Investment \*

\* These services will not be available for forms filed on MCA21 Portal and no cognizance will be taken of entries in those fields. This facility will be available at e-Biz Portal only as per separate procedure prescribed by e-Biz Portal.



### 1.3 Exemption from certain provisions of Co's Act 2013 to Specified ISFC Public Co's and Specified ISFC Private Co's

[Vide Notification G.S.R. 08(E) and 9(E) dated 04.01.2017]

Certain provisions of Co's Act 2013 (as specified in the notification) shall not apply or shall apply certain such exceptions / modifications / adaptations to **"Specified IFSC Public Co.(#)"** and **"Specified IFSC Private Co. (#)"**

(#) Unlisted Public Co. / Private Co. which is licensed to operate by RBI or SEBI or IRDA from the International Financial Services Centre located in an approved multi services SEZ (set-up under SEZ Act, 2005)

### 1.4 Form INC – 32 (SPICe) to be used for Co. incorporation

[Co's (Incorporation) Fifth Amendment Rules, 2016 dtd 29.12.2016]

- a. **Form INC-2** (Application for Incorporation of OPC) **withdrawn** and form INC – 32 (SPICe) to be used for Incorporation of OPC's also.
- b. **INC-7 to be used for incorporation of following types of Co's only –**
  - *Part I Companies*  
*Part I Co. means any **Partnership Firm, LLP, Co-operative Society, Society or any other Business Entity formed under any other law for the time being in force** which applies for registration as a Company* (Chapter XXI, Part I, S. 366)
  - **Company with more than 7 Subscribers**
- c. Rule 36 omitted – Integrated form **INC – 29 for Co. incorporation withdrawn.**
- d. **Rule 38 inserted – reg. INC – 32 (SPICe Form)**
  - Applicable for Incorporation of OPC, Public Co's, Pvt. Co's and S. 8 Co's
  - Filing fee for SPICe reduced from Rs. 2,000/- to Rs. 500/-
  - Particulars of Maximum of 3 Directors permitted under SPICe form
  - Allotment of DIN Maximum of 3 Directors permitted under SPICe
  - Reg. Name of the Proposed Co., Only 1 name can be proposed under SPICe.
  - Provision to apply for Co. Incorporation with a pre-approved Co. Name.
  - Standard format of e-Memorandum of Association (INC-33) and e-Articles of Association (INC-34) as per Companies Act, 2013
  - Memorandum and Articles to be filed as linked e-forms (except for S. 8 Co's)
  - Mandatory DSCs of Subscribers and Witnesses in SPICe MOA and SPICe AOA
  - Requirement of affixing recent Photograph in MOA & AOA – not required.
  - 2 resubmissions allowed (*with max. 15 days' time per resubmission*).
  - Certificate of Incorporation shall be issued in Form INC-11
- e. These Rules are effective from **01.01.2017**



**1.5 Sections pertaining to Removal / Strike-off of Name from Register of Companies and Fast Track Exit Notified -**

a. **Following sections reg. Strike-off of Co's name notified WEF 26.12.2016 –**

<b>S. 248</b>	<p><b>Power of Registrar to remove name of company from Register of Co's</b></p> <p>(1) <b>ROC</b> may suo-motto remove Co's name from the Register of Co's on following Grounds:</p> <p style="margin-left: 20px;">a. <u>Co fails to commence business within 1 yr of its Incorporation.</u></p> <p style="margin-left: 20px;">b. <u>Co. is not carrying on any business / operation for a period of 2 immediately preceding FY's and has not made any application to obtain the status of a dormant co. u/s. 455</u></p> <p>(2) <b>The Co.</b> may after extinguishing all its liabilities, by passing Special Resolution or with the consent of 75% members in terms of PUC, apply for Striking off of its name from Register of Co's on the grounds mentioned above.</p>
<b>S. 249</b>	Restrictions on making application u/s. 248 in certain situations.
<b>S. 250</b>	Effect of Co. notified as dissolved.
<b>S. 251</b>	Fraudulent application for removal of name.
<b>S. 252</b>	Appeal to Tribunal

b. **Companies (Removal of Names of Companies from Register of Companies) Rules 2016 notified on 26.12.2016**

*S. 248 of Co's Act 2013 has replaced S. 560 of erstwhile Companies Act, 1956. Accordingly, procedure for application with respect to closure of defunct company under Fast Track Exit Scheme (FTE) ceases and is now replaced by new rules which has been issued by MCA on 26<sup>th</sup> December, 2016*

- ROC may remove Co's Name on Suo-moto basis u/s. 248(1)
- Names of Listed Co's, Vanishing Co's, S.8 Co's and other Class of Co's (specified in Rule 3) cannot be struck-off under these Rules & Sections.
- Application to ROC for Removal of name of Co. from Register of Co's to be made in **FORM STK - 2** duly certified by CA/CS/CWA in practice, along with Filing Fees of Rs. 5,000. Such application shall be accompanied by following documents –
  1. Indemnity Bond from Director in Form STK-3
  2. Statement of Accounts certified by CA
  3. An Affidavit from Director in Form STK-4  
(in case of Foreign Nationals / NRI, Indemnity Bond and declaration shall be notarised or apostilled or consularised)
  4. Special Resolution duly signed by Every Director
  5. Statement regarding pending litigations, if any, involving Company

**[Form STK (Application to ROC for Removal of name of Co. from Register of Co's) is under development and will be deployed on MCA portal in some time.**  
(Gen. Circular No. 16/2016 dated 26<sup>th</sup> December 2016)]
- The notice u/s. **248(1) (striking off of name suo-motto by ROC)** shall be published by MCA shall be in **Form STK 5** and u/s. **248(2) (striking off of name on application made by Co.)** in **STK 6**.  
Company shall also be required to place application on its website till its disposal.  
**Notice of striking off** shall be given by ROC in **Form STK-7**
- FTE forms filed u/s. 560 of 1956 Act before the date of these rules shall be disposed off in accordance with the rules made under the Companies Act, 1956 only.



## 1.6 Commencement of Sections of companies Act, 2013 WEF 15.12.2016

(vide Notification No. S.O. 3677 (E) dated 07.12.2016)

Cent. Govt. notifies 100 Sections / Sub-section / Clauses / Provisos of Cos Act 2013 effective from 15/12/2016 details of which are provided in **Annexure - 1**

## 1.7 Delegation of Powers to Regional Director (vide Notfn No. S.O. 4090 (E) dated 19.12.2016)

Cent. Govt. delegates following powers to Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong –

*(Notifications S.O. 1539(E) dtd 10.07.2012 and S.O. 1352(E) 21.05.2014 superseded)*

i. S. 8 (4) (i)	for alteration of MOA in case of conversion of S. 8 Co. into another kind of Co. <i>(in case of Alteration of MOA for any other reason, previous approval of CG is required)</i>
ii. S. 8 (6)	Revocation of Sec. 8 Co. License by CG for Contravention, Fraud, etc.
iii. S. 13 (4) & (5)	Approval for alteration of MOA relating Shift of Regd. Office from one State to another.
iv. S. 16	Rectification of name of Company.
v. S. 87	Rectification in Register of Charges by CG.
vi. S. 111 (3)	Reg. Circulation of members' resolution
vii. S. 140 (1)	Removal of Auditor before expiry of term by Special Resolution & previous approval of CG.
viii. S. 230 (5)	Reg. Circulation of Notice & Documents reg. compromise / arrangements to CG
ix. S. 233 (2) (3) (4) (5) (6)	Powers of CG reg. Merger / amalgamation of certain Co's (Small Co's, Holding & Subsidiary Co's and Class Co's)
x. 1 <sup>st</sup> & 2 <sup>nd</sup> Proviso to S. 272 (3)	Petition for winding up. - Registrar to obtain previous approval from CG (now RD) to present a petition - CG not to accord sanction unless co. has been given reasonable opportunity to make representations.
xi. S. 348 (1)	Information as to pending liquidations in case winding up of a Co. is not concluded within 1 year after its commencement
xii. S. 361, 362, 364, 365	Summary procedure for liquidation, Sale of assets and recovery of debts due to Co, Appeal by Creditor, Order of dissolution of Company.
xiii. Proviso (i) to S. 399 (1)	Public Inspection of documents delivered to ROC with Prospectus can be done only within 14 days from date of its publication; and at other times, only with the permission of CG
xiv. S. 442	CG to maintain a panel of experts called Mediation & Conciliation Panel for mediation between the parties during the pendency of any proceedings before CG / Tribunal / Appellate Tribunal

## 1.8 Companies (Removal of Difficulties) Fourth Order, 2016 issued WEF 15.12.2016

*(vide S.O. 3676(E) on 7<sup>th</sup> December 2016)*

### **Reg. Transfer of pending proceedings, following Provisos to S. 434 (1) (c) inserted:**

Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal

Provided further that –

- (i) all proceedings under Co's Act, 1956 other than the cases relating to winding up of co's that are reserved for orders for allowing or otherwise such proceedings; or
- (ii) the proceedings relating to winding up of co's which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of Co's Act, 1956 and Co's (Court) Rules, 1959"

## 1.9 Co's (Transfer of Pending Proceedings) Rules, 2016 notified WEF 15.12.2016

(G.S.R 1119(E) dated 07.12.2016)

**Companies (Transfer of Pending Proceedings) Rules, 2016** are made vide powers u/s. 434 of Co's Act, 2013 read with S. 239 (1) of the Insolvency and Bankruptcy Code (Code) 2016 and have come into force WEF 15<sup>th</sup> December 2016 (Except Rule 4).

- **Transfer of pending proceedings relating to cases other than Winding up** (R. 3) -

All proceedings under Co's Act (*incl. those related to arbitration, compromise, arrangements & reconstruction*) other than proceedings relating to winding up on 15.12.2016 shall stand transferred to the Benches of the Tribunal exercising respective territorial jurisdiction:

(Note – all proceedings which are reserved for orders for allowing or otherwise of such proceedings shall not be transferred)

- **Pending proceeding relating to Voluntary Winding up** [R. 4 (not yet notified)] -

All applications / petitions relating to Voluntary Winding Up of Co' pending before a High Court on 15.12.2016 shall continue with and dealt with by the High Court.

- **Transfer of pending proceedings of Winding up on the ground of inability to pay debts** (R. 5) -

All petitions relating to Winding Up u/s 433(e) the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under Co's (Court) Rules, 1959 shall be transferred to Bench of Tribunal exercising territorial jurisdiction and such petitions shall be treated as applications u/s. 7, 8 or 9 of the Code & dealt with in accordance with Part II of the Code.

Petitioner to submit all info. (*incl. details of the proposed insolvency professional*) required for admission of petition under Code to Tribunal within sixty days from 15.12.2016, i.e before 13.02.2017 failing which the petition shall abate.

All cases where opinion has been forwarded by BIFR, for winding up to a High Court & where no appeal is pending, proceedings for winding up initiated under Co's Act, pursuant to S. 20 of Sick Industrial Co's (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court.

- **Transfer of pending proceedings of Winding up matters on the grounds other than inability to pay debts** (R. 6) -

All petitions filed u/s 433 of Co's Act, 1956 pending before a High Court & where the petition has not been served on the respondent as required under Co's (Court) Rules, 1959 shall be transferred to Bench of Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under Co's Act 2013.

- **Transfer of Records** (R. 7) -

Pursuant to transfer of cases as per these rules, relevant records shall also be transferred by respective High Courts to NCLT Benches having jurisdiction forthwith over such cases.

No Fees is payable in respect of Transfer of Pending Proceedings to Tribunal in accordance with these rules (R. 8)



### 1.10 Others -

- a. In order to correct a typographical error in Schedule II (Depreciation) Amendment Notification dated 17.11.2016, **Corrigendum Notification** has been issued by MCA on 09.12.2016 as under –

***Part A, Para 3, sub Para (ii)***

".....Companies (Accounting Standard) Rules, **2006.**" - to be read as –

".....Companies (Accounting Standard) Rules, **2006**" (*full stop deleted*)

- b. **Companies (Compromises, Arrangements & Amalgamations) Rules, 2016** notified vide G.S.R 1134(E) dated 14<sup>th</sup> December 2016. These Rules have come into force WEF 15<sup>th</sup> December 2016.

- c. **National Company Law Tribunal (Amendment) Rules, 2016** notified vide G.S.R. 1159(E) dated 20<sup>th</sup> December 2016

- d. **National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016** notified vide G.S.R. 1147(E) dated 15<sup>th</sup> December 2016

- e. **Due date for filing AOC – 4, AOC – 4 (CFS), AOC – 4 (XBRL) & MGT – 7 without additional fee for Co's having Registered Office in the State of Jammu and Kashmir extended to 31.12.2016** (Gen. Circular No. 14/2016 dated 07.12.2016)

**f. Regarding IEPF -**

- **Clarification reg. Filing of Offline Challan with IEPF Authority issued**

(Gen. Circular No. 13/2016 dated 05.12.2016)

It is mandatory to deposit IEPF u/s. 125 via online mode only. Physical Challans (*i.e those not generated on MCA portal*) will be not be accepted after 15.12.2016

- **Clarification reg. Due Date of Transfer of Shares to IEPF Authority issued**

(Gen. Circular No. 15/2016 dated 07.12.2016)

Matters reg. Simplification of Procedure for Transfer of Shares to IEPF and Extension of Due date for such transfer are under consideration by the Ministry and Rules are likely to be revised.

- Period of tenure of **Shri Amardeep Singh Bhatia**, as **CEO** (Additional Charge) in the IEPF Authority **extended for a further period of 1 year WEF 01.11.2016** or till further orders, whichever is earlier [*Notification S.O. 554(E) dated 20.02.2017*]

(Contd. in Next issue)





# TAX UPDATES - JANUARY 2017

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

## VAT, CST, ENTRY TAX, PROFESSIONAL TAX

### PARTS DIGESTED:

95 VST – Parts 1 to 5

96 VST – Parts 1, 3 & 4

Reference	Description
<b>[2016] 95 VST 17 (Karn. – HC)</b>	<p><b>Anantha Padmanabha Bhat</b></p> <p>In the instant case, the Honourable Karnataka High Court dealing with Rule 135(2) of the Karnataka Value Added Tax Rules, 2005, held as under:</p> <ul style="list-style-type: none"> <li>(a) The said Rule talks only about goods in the stock which clearly refers to the goods dealt by the assessee in the regular day-to-day business for which he is registered by the Department.</li> <li>(b) These Rules do not intend to cover the goods purchased for construction or being material to be fixed in the building premise of the assessee like the vitrified tiles in the present case.</li> <li>(c) In the present case, the tiles purchased from the State of Gujarat on payment of CST and fixed in the floor of the restaurant in question, cannot be said to be 'goods in stock', while they can definitely be said to be 'goods' as such.</li> <li>(d) The exclusion of the 'goods in stock' which are brought from outside the State on the date when the assessee opts for Composition Scheme and the restriction put on him not to sell such goods after the date is obviously not applicable to the facts of the present case.</li> <li>(e) The restriction against sale of such goods which are purchased from outside the State stands complied with in the present case, as it not the case of the Revenue that the vitrified tiles purchased by the assessee from the State of Gujarat were sold in the course of his business.</li> </ul> <p>Therefore, the Court held that question of violation of condition as specified under Rule 135(2) of the KVAT Rules, 2005 does not arise.</p>
<b>[2016] 95 VST 345 (Bom. – HC)</b>	<p><b>CST v. Bhima Sahakari Sakhar Karkhana Ltd.</b></p> <p>In the instant case the Honourable Bombay High Court held that the word 'goods' as defined in Section 2(13) of the Bombay Sales Tax Act, 1959 would not cover bagasse as the same is not separately identified as such. Bagasse cannot be treated as 'sugarcane'.</p>
<b>[2016] 96 VST 98 (Guj. – HC)</b>	<p><b>State of Gujarat v. Larsen &amp; Tourbo Ltd.</b></p> <p>In the instant case the assessee engaged in the business of manufacturing engineering goods and execution of works contracts in different parts of the country, having manufacturing division at Hajira near Surat in the State of Gujarat. It had entered into contract with ONGC for the commission of turnkey projects at Bombay High which situated in exclusive economic zone of the coast of India. The Court held that when the sale of goods took place at Bombay High, for which the goods moved from Hazira to Bombay High, such movement did not get covered within the expression 'movement of goods from one State to another' under Clause (a) to Section 3 of the CST Bombay High was a part of Exclusive Economic Zone and did not form part of the any State of Union of India.</p>



## INCOME TAX

### PARTS DIGESTED:

- |                                |                            |
|--------------------------------|----------------------------|
| a) 390 ITR – Parts 1 to 5      | e) 52 ITR (Trib.) – Part 6 |
| b) 243 Taxman – Part 1 to 3, 5 | f) 161 ITD – Part 4        |
| c) 244 Taxman – Part 2         | g) 51 CAPJ – Part 1        |
| d) 50 ITR (Trib.) – Parts 5    | h) 48-B BCAJ – Part 4      |

Reference	Description
<b>[2017] 390 ITR 40 (Bombay)</b>	<p style="text-align: center;"><b>Parmanand Builders (P.) Ltd. v. CIT</b></p> <p>In the instant case the Honourable Bombay High Court held that Tribunal must confine itself to the subject matter of the appeal and not go beyond it, but quite another to say that whilst deciding such subject matter it cannot consider questions which are incidental to, or would follow as a consequence of, its determination.</p> <p>It held that if the Tribunal rejects the assessee's case on a particular ground, and if such ground affords a certain relief to the assessee without his having to aver any new facts, such relief cannot be denied on the footing that the assessee never claimed it. If the assessee did not claim it, the Tribunal must grant it suo motu, as a matter of law, if the relief does follow as a legal incident.</p>
<b>[2017] 390 ITR 137 (Gauhati - HC)</b>	<p style="text-align: center;"><b>Guwahati Metropolitan Development Authority</b></p> <p>In the instant case the Honourable Gauhati High Court held that the in notice under Section 147, the Assessing Officer should also mention the material giving rise to belief that income has escaped assessment. In the absence of the same, notice will be invalid.</p>
<b>[2017] 390 ITR 381 (All. – HC)</b>	<p style="text-align: center;"><b>CIT v. Kanpur Plastipack Ltd.</b></p> <p>In the instant case the managing director of the assessee had executed a power of attorney in favour of the company's accountant to represent the company in the assessment proceedings. Notice under Section 148 was served on the Accountant.</p> <p>On appeal before the Honourable Allahabad High Court as regards the validity of notice issued under Section 148, the Court held as under:</p> <p>(a) The power of attorney confined the authority to represent to conduct the case, and it did not include in it any authority to accept any fresh notice.</p> <p>(b) The person on whom the notice under Section 148 of the Act was served was not the principal officer of the assessee nor was there any material to show that he had been authorised by the assessee to accept any notice.</p> <p>Therefore, the Court held that the reassessment proceeding, which were initiated on the basis of such notice was invalid.</p>
<b>[2017] 390 ITR 609 (Delhi)</b>	<p style="text-align: center;"><b>Skin Institute &amp; Public Services Charitable Trust v. CIT (Exemptions)</b></p> <p>In the instant case the Honourable Delhi High Court held that exemption of section 10(22A) is not subject to section 13(1) or any of its further conditions. Disqualification which attaches in absolute terms by virtue of provisions of section 13(1) especially through section 13(3) to income out of which some benefit flows to a settler/founder, does not per se apply to institutions covered by section 10(22A)</p> <p>The Court held that where assessee society duly registered under Indian Societies Act was entitled in law to claim exemption of its income under section 10(22A), fact that managing trustee/founder director in trust was participating in profits of income of trust would not disentitle institution to claim aforesaid exemption.</p>

<p><b>[2017] 390 ITR 615 (P&amp;H - HC)</b></p>	<p style="text-align: center;"><b>CIT v. Mercer Consulting (India) (P.) Ltd</b></p> <p>In the instant case the Honourable Punjab &amp; Haryana High Court dealing with transfer pricing provisions held as under:</p> <ul style="list-style-type: none"> <li>(a) Where TPO applied export earnings filter of 75 per cent, merely because there was a small deviation in case of one company as it earned 74.45 per cent of its revenue from exports, said company could not be excluded from list of comparables;</li> <li>(b) There is nothing sacrosanct about the figure of 75%. A deviation that does not affect the result is acceptable. Transfer pricing is not an exact science. It is not capable of arithmetical precision;</li> <li>(c) The financial results of enterprises involved in dissimilar activities cannot be compared. Similarly the financial aspects of dissimilar activities of two enterprises cannot be compared. Only the similar activities of the two can be considered provided however they are financially comparable;</li> <li>(d) A giant company cannot be compared with the assessee which was a captive unit of a parent company assuming only limited risks;</li> <li>(e) Merely because the services provided by the Assessee and the comparable company's service i.e. Geographical Information System service are included as ITES in the Board Circular dated 26.09.2009, it does not follow that they are comparable to each other for the purpose of determining the ALP in respect of the assessee's international transactions. The circular is issued for entirely different reasons viz to enable an assessee to avail deductions in respect of certain activities. The sections do not contemplate or even remotely indicate that the activities referred to therein are comparable to each other. Much less do these provisions indicate that the activities included therein have any relevance to the transfer pricing mechanism for the purpose of determination of the ALP of international transactions.</li> </ul>
	<ul style="list-style-type: none"> <li>(f) It is not the financial year per se that is relevant. Even if the financial years of the assessee and of another enterprise are different, it would make no difference. If it is possible to determine the value of the transactions during the corresponding periods, the purpose of comparables would be served. The question in each case is whether despite the financial years of the assessee and of the other enterprise being different, the financials of the corresponding period of each of them are available. If they are, the TPO must refer to the corresponding period of both the entities in determining whether the two are comparable or not for the purpose of determining the ALP.</li> <li>(g) If the data furnished is not relevant or comparable it cannot possibly be considered merely because the assessee has relied upon it. If the TPO finds the data to be irrelevant he is not only entitled but bound to exclude it from consideration. There is no reason then why the TPO cannot do so on the application of the assessee. Indeed if the case is comparable the TPO is not bound to reject it merely because the assessee applies to have it excluded. Whether or not to exclude the case from the list of comparables depends upon the relevance of the case and not the desire of the parties.</li> <li>(h) There can be no comparison between an enterprise that conducts its business activities itself with one that outsources its activities although the activities pertain to the same field. The entire administrative set up of such enterprises would be different.</li> </ul>
<p><b>[2016] 242 Taxman 507 (SC)</b> <b>[2016] 74 taxmann.com 169 (SC)</b></p>	<p style="text-align: center;"><b>CIT v. Purewal &amp; Associates Ltd.</b></p> <p>In the instant case the Honourable Supreme Court held that where assessee received a waiver of interest of certain amount and offered same as income under section 41(1), the deduction claimed under section 80HHC on entire amount of deemed income is justified. SLP was dismissed.</p>



<p><b>[2016] 243 Taxman 1 (Gujarat)</b></p>	<p align="center"><b>AMP Spinning &amp; Weaving Mills (P.) Ltd. v. ITO</b></p> <p>In the instant case the Honourable Gujarat High Court held that where assessee-dealer in chemicals applied in public issue of certain companies and was allotted shares which it sold and suffered loss, same could not be disallowed as speculation loss.</p>
<p><b>TS-23-HC- 2017(BOM)-TP</b></p>	<p align="center"><b>CIT v. Lever India Exports Ltd</b></p> <p>In the instant case Assessee-company was engaged in business of manufacture and export of cosmetic and toiletry products. During relevant assessment year, assessee reimbursed 20% of advertisement expenses incurred by its Associated Enterprises in respect of new products.</p> <p>The TPO opined that as transaction between parties were on principal to principal basis, no reimbursement of advertisement expenditure by assessee to its AE could be allowed. He thus determined ALP of said payment at nil.</p> <p>Commissioner (Appeals) as well as Tribunal noticed that TPO had neither challenged appropriate method for determining ALP nor comparables selected by assessee to determine it.</p> <p>Therefore on appeal before the Honourable Bombay High Court, the Court deleted addition made by TPO on ad hoc basis by holding as under:</p> <p>(a) In transfer pricing proceedings, TPO has to examine whether or not method adopted to determine ALP is most appropriate and also whether comparables selected are appropriate or not and, it is not part of TPO's jurisdiction to consider whether or not expenditure which incurred by assessee has passed test of section 37.</p> <p>(b) Since in instant case, determination of ALP by assessee of its advertisement expenses had not been disputed on parameters set out in Chapter X of Act, Tribunal was justified in deleting impugned addition.</p>
<p><b>TS-1091-HC- 2016(AP)-TP</b></p>	<p align="center"><b>RAK Ceramics India Private Limited</b></p> <p>In the instant case the Honourable Andhra Pradesh and Telangana High Court confirmed ITAT ruling deleting TP adjustment on royalty paid to AE by holding as under:</p> <p>(a) TPO was unjustified in reducing the royalty rate from 3% to 2% without substantiating it with an appropriate alternate TP analysis;</p> <p>(b) TPO had rejected assessee's TP analysis on the ground that the increase in sales of assessee was attributable to marketing efforts and assessee failed to demonstrate the benefit derived from royalty payment, thus failing to meet the benefit test;</p> <p>(c) Relying on SC ruling in Walchand and Co. Pvt Ltd, the Court held that once assessee claimed that it had benefited from royalty agreement in the form of quantum increase in sales with no apparent increase in production, minimal product recalls and low after sales maintenance cost, 'it was not for the TPO to determine as to what could be the other reasons for increase in the assessee's sales and profit'</p> <p>(d) TPO did not examine alternative comparables to justify reduction in royalty rate, after rejecting assessee's comparables on the ground that they were US based while assessee's AE was based out of UAE,.</p> <p>Thus, the Honourable Court held that once it is admitted by revenue that assessee entered into a royalty agreement with AE and assessee claimed benefit from such agreement, in form of increase in sales but there was no apparent increase in production, minimal product recalls and low after sales maintenance cost, and, consequently paid royalty in terms thereof, it was not for TPO to determine as to what could be other reasons for increase in assessee's sales and profit and TP addition made by TPO on account of royalty payment by reducing rate of payment amounted to an arbitrary and unbridled exercise of power by TPO.</p>



<b>TS-30-HC-2017(KER)</b>	<p style="text-align: center;"><b>Agarwal Yuva Mandal (Kerala)</b></p> <p>In the instant case assessee received intimation under Section 143(1) wherein certain deduction was not allowed, consequently a revised return was filed by assessee which was not considered by AO and also CIT declined to entertain assessee's revision petition under Section 264.</p> <p>On writ before the Honorable Kerala High Court, the Court observed that a mere intimation does not amount to an order which could be revised under 264 in view of statutory provision under Section 143(1) which uses the word intimation and not order. However, considering that CIT's revisionary powers are very wide, the Court opined that if there is failure on part of taxpayer in making a claim for deduction, the CIT may grant one more opportunity in the matter.</p> <p>Thus, the Court held that "independent of the notice issued under Section 143(1)(a), when the petitioner has filed a revised return and has sought for interference by the Commissioner, necessarily the claim has to be considered in accordance with law.</p>
<b>TS-42-SC-2017</b>	<p style="text-align: center;"><b>Tata Teleservices Ltd.</b></p> <p>In the instant case the Honourable Supreme Court dismissed the Revenue's SLP against Delhi High Court judgement wherein the Honourable High Court:</p> <ul style="list-style-type: none"> <li>(a) Had quashed Section 201(1)/(1A) proceedings on assessee in respect of TDS default on pre-paid cards payments relating to period prior to April 2007;</li> <li>(b) Had rejected Revenue's action of invoking extended time-limit under Section 153(3)(ii) (for giving effect to findings/ directions issued by Court) for issuing notice under Section 201 on assessee based on subsequent Idea Cellular ruling rendered in 2010;</li> <li>(c) Had accepted assessee's stand that proviso to Section 201(3) (specifying March'11 deadline for passing order under Section 201 for pre-April'07 cases) has to be read in consistency with law laid down by Delhi HC ruling in NHK Japan Broadcasting Corporation (laying down 4 years limitation period for initiation of Section 201 proceedings) and should not permit Department to initiate Sec 201 proceedings for a period more than four years prior to March 31, 2011.</li> </ul>
<b>TS-46-HC-2017(DEL)</b>	<p style="text-align: center;"><b>Sony India Pvt. Ltd.</b></p> <p>In the instant case the Honourable Delhi High Court allowed depreciation on assets forming part of 'block of assets' in respect of assessee's unit which was sold and ceased to exist during relevant AY. The Court rejected Revenue's stand that since the assets pertained to discontinued unit, depreciation under Section 32 cannot be allowed as assessee was neither the owner of assets nor assets were put to use in assessee's business by holding that despite the unit hived-off, 'block of assets' did not come to an end and assessee rightly claimed depreciation thereon.</p>
<b>TS-70-SC-2017</b>	<p style="text-align: center;"><b>A.P. Moller Maersk A/S</b></p> <p>In the instant case the Honourable Supreme Court held that amounts received by assessee from its Indian agents for Global Telecommunication Facility 'Maersk Net' not taxable in India as fees for technical services.</p> <p>It held that Global telecommunication facility was a common facility provided by assessee to all its agents across countries to enable them to discharge their role more effectively, which was an integral part of shipping business and hence payments towards same were not towards any technical services, but reimbursement of the costs by its agents to the Assessee for using the Global Telecommunication Facility.</p>



<p><b>[2016] 161 ITD 256 (Chennai - Trib.)</b></p> <p><b>[2016] 74 taxmann.com 98 (Chennai - Trib.)</b></p>	<p><b>Gurbinder Singh v. Asst. CIT</b></p> <p>In the instant case the Honourable Chennai Tribunal held that where assessee was holding substantial interest in a company, while computing deemed dividend under section 2(22)(e) in respect of loan received by assessee from said company, Assessing Officer had to take into consideration payments made by assessee to company as well and it was only excess amount of debit in books of account of company which could be regarded as deemed dividend.</p>
<p><b>[2016] 74 taxmann.com 161 (Bangalore - Trib.)</b></p>	<p><b>Bosch Ltd. v. CIT</b></p> <p>In the instant case the Honourable Bengaluru Tribunal held that amount paid by assessee for acquisition of right to use trademark for a period of three years was covered by section 32(1)(iii) and, thus, same could not be allowed as revenue expenditure.</p>
<p><b>[2016] 74 taxmann.com 163 (Gujarat)</b></p>	<p><b>CIT v. Indian Petrochemicals Corporation Ltd</b></p> <p>In the instant case the Honourable Gujarat High Court held that prior period expenses quantified and paid during current year would be allowed as business expenditure in relevant assessment year even though assessee was following mercantile system of accounting.</p>
<p><b>[2016] 161 ITD 818 (Kolkata - Trib.)</b></p> <p><b>[2016] 74 taxmann.com 187 (Kolkata - Trib.)</b></p>	<p><b>Orchid Griha Nirman (P.) Ltd.</b></p> <p>In the instant case the Honourable Kolkata Tribunal held that Section 45(3) is applicable only in respect of a capital asset; thus, where a land was brought in a firm by partners as current assets and firm had also accounted for it as a current asset, section 45(3) would not be applicable</p>
<p><b>[2016] 75 taxmann.com 270 (Visakhapatnam - Trib.)</b></p>	<p><b>Dy. CIT v. Dr. Chalasani Mallikarjuna Rao</b></p> <p>In the instant case the Honourable Visakhapatnam Tribunal held that meaning of full value of consideration as referred to in Explanation to section 54F(1) is not governed by meaning of words full value of consideration, as mentioned in section 50C</p>
<p><b>[2017] 48-B BCJA 380 (Visakhapatnam - Trib.)</b></p> <p><b>[2016] 75 taxmann.com 136 (Visakhapatnam - Trib.)</b></p>	<p><b>B. Subba Rao</b></p> <p>In the instant case the Honourable Visakhapatnam Tribunal held that when a return is filed for first time in response to notice issued under section 153A, provisions of section 234A(1)(a) are applicable and interest is chargeable for period commencing on date immediately following due date referred to under section 139 and ending on date of furnishing of return and not from the due date of filing return of income mentioned in Section 153A of the Act.</p>
<p><b>[2017] 48-B BCJA 384 (Ahmd. - Trib.)</b></p>	<p><b>Dy. DIT v. Shell Global Solutions International BV</b></p> <p>In the instant case the Honourable Ahmedabad Tribunal held that transfer pricing legislation cannot be rendered ineffective on basis of limitations in provisions of Article 9 of India-Netherlands DTAA. Therefore, as long as conditions precedent in article 9 are attracted application of arm's length standard certainly comes into play and, in such a situation, domestic transfer pricing law will apply because DTAA does not contain machinery provision for applying arm's length standard as envisaged in article 9(1) of India Netherlands DTAA.</p>

<p><b>TS-34-ITAT-2017(DEL)</b></p>	<p style="text-align: center;"><b>GE Energy Parts Inc. v. DIT (International Taxation)</b></p> <p>In the instant case Assessee was a company incorporated in USA and was part of GE Group which makes equipments to customers in India relating to oil and gas business, energy business, transportation business and aviation business. It had set up a Liaison Office (LO) in India with permission of RBI for undertaking purely liaison activities.</p> <p>However, pursuant to survey conducted at LO premises in India, the following facts were observed:</p> <p>(a) That actual activities carried on from fixed place of LO did not remain confined only to those of a communication channel as was allowed by RBI to GE Overseas at time of setting up its LO in India.</p> <p>(b) GE India was doing core marketing and sales activity and GE overseas was doing auxiliary activities, in aid and support of marketing activities carried out by GE in India Expatriates were deputed in India for undertaking marketing activities/sale functions of overall GE group.</p> <p>(c) Further, GE India also had authority to conclude contracts on behalf of GE overseas.</p> <p>Thus, the Tribunal held that LO constituted assessee's fixed place PE and that GE India comprising of expatriates/employees of overseas GE entities constituted dependent agency PE</p>
<p><b>TS-54-ITAT-2017(Mum)</b></p>	<p style="text-align: center;"><b>Atos Information Technology HK Ltd.</b></p> <p>In the instant case the Honourable Mumbai Tribunal held that payments received by the assessee from an Indian bank towards provision of data processing support through a network of computer systems in Hong Kong is not taxable as royalty under Section 9(1)(vi).</p> <p>The Tribunal noted that infrastructure facilities (in the form of data centre, connectivity, dedicated centres for disaster recovery/ storage facility, etc. for payer's banking operations) provided by the assessee was merely to ensure quality, standard and safeguards, adopted in the course of data processing. The subject arrangement was a kind of outsourcing activity for processing payer's data from various branches across the country without any transfer or application of technology to the payer.</p> <p>Thus the tribunal rejected Revenue's contention that assessee provided technology by creating/ providing facility. The Tribunal held that there was absolutely no use of equipment within the definition given in clause (iva) of Explanation 2 to Sec. 9(1)(vi) absent income from leasing of any equipment in assessee's case.</p> <p>Further the Tribunal also rejected Revenue's reliance on Explanation 5 and 6 inserted w.r.e.f April 1, 1976 observing that they cannot apply to clause (iva) of Explanation 2 which was inserted from April 1, 2002. The Tribunal held that payments received by the assessee doesn't fall within the realm of FTS as contained in Section 9(1)(vii) as assessee had only provided a standard facility for data processing without any human intervention.</p>
<p><b>TS-57-ITAT-2017(DEL)</b></p>	<p style="text-align: center;"><b>Patanjali Yogpeeth (Nyas)</b></p> <p>In the instant case the Honourable Delhi Tribunal held that it is well established fact that the practice of yoga gives positive reliefs in the cases of asthma, migraine, hyper tension, stress etc. Therefore, it held that even for AYs prior to AY 2016-17 (i.e. before including 'Yoga' under Section 2(15) by the Finance Act, 2015), yoga qualifies as 'medical relief'</p>
<p><b>TS-67-ITAT-2017(HYD)</b></p>	<p style="text-align: center;"><b>Nagarjuna Fertilizers</b></p> <p>In the instant case the Honourable Special Bench of Hyderabad Tribunal held that Section 206AA (which provides for higher TDS rate of 20% absent PAN) cannot override beneficial DTAA rates.</p>
	<p style="text-align: center;"><b>Circular No. 8 of 2017 dated 23.02.2017</b></p> <p>CBDT issued circular clarifying that provisions of Sec 6(3)(ii) relating to place of effective management (POEM) would not apply to companies having turnover or gross receipts less than Rs 50 crores during financial year.</p>



# DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra



## **1) State of Karnataka v. Cognizant Technology Solutions India Private Limited [2017] 98 VST 45 (Karn.)**

**Input tax credit on incidental purchases used for the principal object of manufacture to SEZ under Rule 130-A of KVAT Rules 2005 is eligible.**

**Facts:** The respondent - dealer has processed inputs of foreign clients for the generation of output which was being exported. Since the dealer is found eligible to claim refund of the purchase tax on inputs used, the nature of the said inputs have been verified by the assessing authority. On due verifications, the appellant has raised an issue stating that under Rule 130A of the Karnataka Value Added Tax Rules, 2005, items such as mobile, drinking water and other electronic gadgets are not eligible for input tax credit since, the same had nothing to do with the development activity of the unit.

**Grounds of Appeal :** The respondent – dealer has referred to clause (c) of Rule 130A(1), which can be read as follows: “(c): If such inputs are purchased for use in manufacturing, trading production, processing, assembling, repairing, reconditioning, re-engineering or packaging in an unit located in the processing area of any special economic zone”. The respondent – dealer is engaged in the activity of software development/ software application management, for which it processes the

inputs obtained from foreign clients. Therefore, dealer can be considered as a unit engaged in processing activity located in the processing area of a Special Economic Zone and thus, forms part of the above clause. Further, clause (c) of sub-rule 1 of Rule 130A is wide enough to cover all the activities of manufacture or production and includes all such incidental purchases used for the principal object of manufacture. Therefore, all such activities shall be included for the purpose of input- tax credit or refund of tax, as in the present case.

**Judgment:** The High court had remanded back the matter to the assessing authority for verification of such items and their use in the course of principal manufacture. On obtaining satisfaction by the assessing authority, the refund of such input tax credit has been allowed to the SEZ dealer.

## **2) Deco Light Ceramics Limited v. State of Gujarat - [2017] 98 VST 64 (Guj.)**

**Mandatory Pre deposit in case of Appeal is required even though the case pertains to non-filing of Statutory Forms.**

**Facts:** As per the re-assessment orders passed by the assessing officer, it was found that the assessee was eligible to a refund under the Central Sales Tax Act. However, the assessing officer had raised a total demand inclusive of both interest and penalty for the assessment years 2008-09 and 2009-10. While the appellant had proceeded for an appeal

before the appellate authority and the Tribunal, both the authorities had imposed the condition of pre-deposit of 20 per cent of the total demand raised, inclusive of interest and penalty. Being aggrieved by the same, the appellant has filed for an appeal before the High Court.

**Grounds of Appeal:** The appellant has thereby contended that the entire tax liability has arisen due to failure of non-submission of necessary documents which declare that part of the sales turnover pertained to branch transfer sales, part were inter-state sales and part were export sales. Thereafter, if such necessary forms are produced, then the tax liability shall fall to either Nil or virtually Nil. Therefore, the imposed condition of 20 per cent of pre-deposit shall stand incorrect. On the other hand, the respondent has stated that none of the necessary forms have been produced before the assessing authority or the appellate authority which disclosed the true nature of such sales made. Therefore, on mere statements of the appellant, the order issued by the respondent cannot be reversed.

**Judgment:** The appellant is required to deposit 20 per cent of the tax liability, exclusive of interest and penalty. On such deposit, the orders passed by the appellate authority and Tribunal shall be reversed and the matter shall be remanded back to the lower authorities, where the necessary documents shall be submitted.

**3) State of Gujarat v. Reliance Industries Limited – [2017] 98 VST 111 (Guj.)**

**Interstate sale of LPG exempt even though the conditions state that LPG should be used by consumers of the state.**

**Facts:** The appellant is engaged in refining and sale of Petroleum products. During the assessment period, the assessee had sold Liquefied petroleum gas (LPG) to LPG Infrastructure Pvt. Ltd., the purchasing dealer, for domestic use. According to the assessee, such sale is exempt under Entry 69 issued under the Notification by the Government of Gujarat which read as under **“Sales of LPG for domestic use”**. Accordingly, the appellant had not collected tax on its inter-state sales, replying on the provisions of Section 8(1) of the CST Act. Thereafter, the entry was amended with effect from October 3, 2008 and read as **“Sales of LPG for domestic use by the consumers of the State”**. On the basis of the above amendment, the appellant has passed an order demanding CST on the inter-state sales effected after 3<sup>rd</sup> October, 2008.

**Grounds of Appeal:** Section 15 of the CST Act, 1956 provides that any State law imposing tax on sale and purchase of goods made in the course of inter-state trade, declared by the Parliament to be of special importance, shall be subject to a rate of tax not exceeding Five per cent. Section 14 of the CST Act specifies various goods which are declared to be of special importance in inter-state trade which includes liquefied petroleum gas.

The appellant has contended that in case any other entry in the Schedule specifies a rate of tax lower than the general rate of five per cent for any specified products, then such entry shall over rule the general entry 55 which specified a maximum rate

of Five per cent. Entry 69 of the Schedule pertains to sale of LPG and rate of tax issued for such sale in the domestic area is exempt from tax.

The appellant has further stated that before sub-section (1) of Section 8 of the CST Act, 1956 came into existence, sub-section (2A) under Section 8 was inserted which provided for exemption from Central Sales Tax Act on inter-state sales of goods which are generally exempt from payment of local tax within a particular state. By the Amending Act 16 of 2007, Section 8 was once again amended materially which removes the distinction between conditionally and unconditionally exempted goods. Therefore prior to such amendment, the State Government had the power to restrict such exemption only to local sales by providing a conditional exemption in which case CST shall be leviable. However, with effect from April 1, 2007, the State government cannot differentiate between inter-state and Intra-state sales. Therefore, any amendment in Entry 69 thereby including the words **“by the consumers of the state”** shall not have any effect on the levy of Central Sales Tax. If the levy of CST is accepted on such amendment of Entry 69, then it shall materially alter Section 8(1) of the CST Act. Also, the amended entry 69 is not in any way unconstitutional or outside the legislative competence of the State legislation.

**Judgment:** The High court has upheld the decision of the Tribunal was right in applying entry 69 instead of entry 55 of the Schedule, thereby, exempting the levy of tax on inter-state sale of LPG gas. Further, Entry 69 shall have no difference, even after its amendment with effect from October 3, 2008. The same shall continue to remain exempt from tax, and

the dealer is not required to pay tax at the rate specified under Section 8(1) of the Central Sales Tax Act on such sales.

**4) N J Devani Builders Private Limited and Another v. Deputy Commissioner of Commercial Tax (Appeal -1) and Another (2017)97 VST 106(Guj)**

**Rejected Refund on the basis of mere disclosure in the Tax Credit column in absence of Refund column in Assessment order is incorrect**

**Facts:** The appellant is engaged in the business of civil construction work and has opted for the composition scheme of tax. For the assessment years 2006-07 and 2007-08, the dealer has claimed a refund which failed to be discharged by the department. On filing a writ petition before the high court, the government had ordered the department to discharge such refund as part of an assessment of 2008-09. In the absence of any column for refund in the computer generated pre-set format, the same had been disclosed by the assessing officer in the column of Net Tax Credit. Applicable Interest was also calculated by the Assessing Officer. However, a sum of Rs. 73,236/- had remained unpaid to the dealer. Also, interest payable had been calculated from the date of order of the High Court instead of from the date such refund became payable. On filing an appeal, the Deputy Commissioner has rejected the refund as the dealer had been granted a tax credit which was not allowable under the composition scheme.

**Grounds of Appeal:** The appellant has thereby contended that the Deputy Commissioner has committed a serious error in treating the appellants refund and interest as input tax credit. Such sum was never in the nature of tax credit. Since, the computer generated pre-set format did not have a column for refund granted





of earlier years, the assessing officer had no option but to disclose such amount as Net Tax Credit. The method adopted by the assessing officer shall not change the true character of the said sum payable to the petitioner. In fact, the sum shown by way of interest of such refund, directly relates to the appellants claim for refund. The appellant had further referred to an affidavit filed, which provided clarification on the above aspects.

Further, the assessment years of 2006-07 and 2007-08 have become time barred. Thereafter, such assessments with, or without scrutiny, had not been taken in revision by the competent authority. Therefore, the deputy commissioner cannot disturb the refund payable to the appellant.

#### **Judgment:**

The petitions of the appellant have been considered and the notice issued by the Commissioner rejecting the refund has been quashed. The court shall analyze the case in terms of short refund and short interest and thereafter, issue the order.

#### **5) Commissioner of Value Added Tax And Another V/S J.C Decaux Advertising India Pvt. Ltd - (2017) 98 VST 287 (Delhi)**

#### **Claim of Tax Credit on basis of Retail Invoice is not allowed.**

**Facts:** Appellant holds the first position in largest outdoor advertising specialist in the world has been registered under Delhi Value Added Tax Act, 2004. The Appellant wanted to claim the benefit of Tax Credit in respect of certain Quarters pertaining to the period 2008-09. These transactions were entered with M/s. Jumbo Digital Prints from whom printed banners were sourced. Appellant had duly paid VAT with respect to it. Credit claimed by the Appellant was denied by the VAT Officer on the grounds that the transactions

were disclosed in Retail Invoices and not apparently in Tax Invoices. Hence, it did not qualify for Credit.

**Grounds of Appeal:** The Appellate Authority in view of Section 50 clarifies that a clear distinction exists between Tax Invoice and Retail Invoice. Existence of relevant details in prescribed documents and satisfaction of VAT Officer by the dealer is a pre-requisite for Qualification of Credit. As per Sec 9 (2) a dealer registered under the Act or who is required to be registered under the Act can avail the benefit of Tax Credit if purchases arise in the due course of his activities and consumed directly or indirectly for the purpose of sale. With respect to Section 50 (2) a registered dealer shall be authorized to issue tax invoice only after obtaining certificate of registration from the Commissioner. A Tax Invoice comprises the following aspects:

- Words Tax Invoice specified in the Invoice.
- Name, Address and Registration number of Selling Dealer.
- Name, Address and Registration number of the Purchaser.
- Description, Quantity, volume and value of goods.
- Signature of Selling Dealer.

As stated above the same particulars holds good for Retail Invoice except that it will be mentioned as Cash Memorandum or Bill in the Invoice.

#### **Judgment:**

The denial of input tax credit on the ground that the transactions were reflected in retail invoices and not tax invoices and therefore did not qualify for credit is not valid as the strict interpretation of section 50(2) was unwarranted. The credit is allowed and revenue appeal dismissed.

#### **6. VPSSR Facilities VS Commissioner of Value Added and ANR- TS -31-HC-**

#### **2017 (DEL)- VAT dated 15.2.2017**

#### **The use of consumables chemicals/solvents in the process of cleaning does not amount to transfer of property that are used in the execution of the contract.**

#### **Facts:**

The petitioner was awarded a contract by the Northern Railways (hereinafter referred to as the Contractee) in relation to the management, cleaning, washing, housekeeping, waste management, etc. at Diesel Shed Shakurbasti and at Training School Shakurbasti. It is contended by the petitioner that the contract was for cleaning of sites of Northern Railways (Contractee) and was a pure service contract and no transfer of property from the Petitioner (Contractor) to Northern Railways (Contractee) was involved.

#### **Analysis**

The chemicals and solvents used by assessee is integral part of the execution of cleaning contract but property does not pass on to the contractee for any purpose other than for cleaning, washing and housekeeping. The Honorable High Court states that there is distinction between consumables required for running equipment and consumables required for servicing equipment. The Honorable High Court has rejected the revenue reliance on Enviro chemicals and Xerox Modicorp ruling since the courts were not dealing with goods integral to service contract and completely consumed during the execution thereof.

#### **Judgment:**

It is held that the use of consumables chemicals/solvents in the process of cleaning does not amount to transfer of property to Northern Railways. Therefore the contractee is not required to deduct the TDS and issue the Nil TDS Certificates.

# SERVICE TAX DECISIONS

## PARTS DIGESTED – STR VOLUME 48: PARTS 1 TO 4

CA. A. Saiprasad



### Budget Notifications

1. Entry No.9B of Mega Exemption Notification No. 25/12 ST provided exemption for certain educational programmes provided by IIM. Two year full time residential post graduate diploma in management (MBA course), for which admission was based on CAT was one such program. The term 'residential' has been omitted wef 2.2.17. Hence scope of exemption has been expanded.
2. Services provided to the government by way of transport of passengers by air embarking or terminating at a regional connectivity scheme airport against consideration in the form of viability gap funding has been exempted. The exemption shall be applicable for one year from the date of commencement of operations of regional connectivity scheme airport.
3. Services of life insurance provided by army, naval and air force group insurance funds to members of army, navy or air force respectively under group insurance scheme has been exempted.
4. Any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption has been exempted, from the date the

Finance Act, 17 would come into effect. Prior to the aforesaid date, the aforesaid activity was one of the items mentioned in the negative list.

5. Definition of 'Process amounting to manufacture or production of goods', as per S.65B(40) of Finance Act, 94 has been removed from the Act and inserted in the exemption notification, on and from the date on which Finance Act, 17 would come into effect.

*Notification No.7/17 ST dt.2.2.17*

6. An order has been issued U/s 11C of CEA, 44 r/w S.83 of Finance Act, 94 that service tax payable by operators of common effluent treatment plant by way of treatment of effluents, which was not being paid according to practice shall not be required to be paid for the period 1.7.12 to 31.3.15.

*Notification No.8/17 ST dt.2.2.17*

### Circulars

7. The Circular clarifies that in case of goods transhipped through Indian Territory, whose destination is a place of outside India would not be liable to service tax since as per Rule 10 of Place of Provision of Service Rules, 12, the POPS of such goods is the destination of such goods. If destination of transhipped goods is outside Indian Territory, then

POPS would be outside Taxable Territory and hence tax would not be leviable as per S.66B of Finance Act, 94.

Circular No.204/2/2017-Service Tax from File No.354/42/2016-TRU dt.16.2.17

### Case Laws

Whether Service Tax is payable on entire value in case of retreading of tyres?

The Supreme Court held that when the assessee has paid VAT and had registered as a works contractor under State VAT Act, then service tax was payable only on the service component of such works contract, which was quantified as 30% of the contract value by the VAT Act.

The Supreme Court rejected the departmental plea that there was not deemed sale of materials in execution of contract of repairs and maintenance.

The departmental plea that there was no proof that value of goods or parts used in contract sold amounted to 70% of value was also rejected in view of undisputed assessment of assessee under local VAT Act.

The Supreme Court held that figures stated in the SCN cannot be challenged as unauthentic because they were furnished by assessee and that too before the Supreme Court.

Safety Retreading Co Pvt Ltd V. CCE, 2017 (48) STR 97 (SC)



Whether assessee has to verify if his supplier has paid tax before availing credit thereof?

The Supreme Court held that when there was no dispute that manufacturer of inputs had declared the correct invoice price of inputs in his documents, which was claimed as credit by assessee then lapse of seller to pay excise duty was not a pre-condition to deny credit to the recipient.

CCE V. Kay Kay Industries, 2017 (48) STR 101 (SC)

Whether case involving extended period of limitation can be dismissed by the Tribunal ex-parte?

The Supreme Court held that Tribunal cannot reject a case involving extended period of limitation ex-parte based on a cryptic order. It was held that the assessee deserves to place before the Tribunal, its view point on aspects of their case.

Advance Surfactants India Ltd V. CCCE, 2017 (48) STR 118 (SC)

What is the scope of extra-territorial jurisdiction of the Parliament?

The Supreme Court held that parliament is constitutionally restricted from enacting legislations with extra-territorial aspects or causes that do not have, nor expected to have any direct or indirect, tangible or intangible impact/ effect/ consequence for:

- (a) Territory of India
- (b) Interest or security of inhabitants of India and Indians

The Supreme Court held that where such impact/ effect/ consequence exist, parliament can exercise extra-territorial jurisdiction. Such exercise of power is not subject to a priori quantitative tests

such as 'sufficiency or significance tests'. All that is required is connection to India be real and not illusory or fanciful. That the existence of such conditions would be a mixed matter of facts and law.

When a CA Certificate would be believed by Courts in relation to refunds?

When proof that burden of duty was not passed on is adduced by way of a CA Certificate, certifying the factual position and ascertaining on oath the documents that duty burden was not passed, then such Certificate should normally be believed unless there are grounds and reasons to reject or disbelieve the same.

Hero Motocorp Ltd V. CC, 2017 (48) STR 225 (Del)

Whether grounds on limitation and merits both must be taken into consideration by Tribunal?

The High Court held that when the Commissioner (Appeals) allowed the case on limitation without going into merits but the Tribunal decided the case only on merits on an appeal by the department without going through the merits, then the Tribunal ought to have considered limitation before giving the decision.

Ashok Singh Academy V. CCE, 2017 (48) STR 3 (All)

Can change in management of assessee be taken as a reason for non-payment of tax?

The High Court held that change in management of assessee company could not be taken as aid by the assessee in seeking exemption from its liability to pay amounts confirmed against its statutory authority. However assessee was permitted to pay tax in installments.

Vikas Hire Purchase Co Ltd V. CCE, 2017 (48) STR 4 (Ker)

Whether interest is payable by the Government when it has filed an appeal?

The High Court held that when the refund was allowed by the Commissioner (Appeals) and when there was no stay against it in revision filed before revisionary authority, then mere pendency before revisionary authority could not be taken as ground for non-payment of tax. High Court held that interest had to be paid from the date of filing the refund application.

Whether interest is payable on pre-deposit during the pendency of appeal?

The High Court held that pre-deposit becomes refundable as a consequence of the order of the Court/ Tribunal. Hence interest would not be payable during the period of pendency of appeal before Court/ Tribunal.

Abdulla Gani V. UOI, 2017 (48) STR 17 (Bom)

Whether a co-accused could be convicted on the basis of admission of another co-accused?

The High Court held that confession by one co-accused could not be taken as evidence to convict another co-accused as the aforesaid evidence is 'weak' and not based on corroborated statement of the other co-accused. In the instant case Trial Court had acquitted persons who had been named by the accused carrier of gold biscuits as the owner of gold biscuits due to lack of corroborative evidence against owners. The order of trial court was upheld by the High Court.

AC, Customs V. Amrik Singh, 2017 (48) STR 41 (P&H)

# Seminar on Bank Branch Audit

Organised by **Bangalore Branch of SIRC of  
The Institute of Chartered Accountants of India**

On **Saturday, 25<sup>th</sup> March 2017**

Venue: **Hotel Le Meridien**, Sankey Road, Bangalore

Time: **09.45am to 5.45pm**



Timings	Topics	Speakers
9.00am to 09.45am	Registration	
09.45am to 10.15am	INAUGURATION	
10.15am to 11.45pm	Case Studies in Audit of Advances	<b>CA. P.R. Suresh</b> <i>Bangalore</i>
11.45am to 12.00pm	Tea Break	
12.00pm to 1.30pm	Expectation of Bankers from Branch Auditors	<b>Shri. Adikeshavan</b> <i>Chief General Manager SBI, Hyderabad</i>
1.30pm to 2.30pm	Lunch	
2.30pm to 4.00pm	Audit Planning, Executions & Building Working papers through Excel	<b>CA G Venugopal</b> <i>Bangalore</i>
4.00pm to 4.15pm	Tea Break	
4.15pm to 5.45pm	Session continues	

**DELEGATE FEES FOR MEMBERS: ₹ 2100/-**  
**FOR OTHERS: ₹ 5725/- (INCL. OF SERVICE TAX & CESS)**

Mode of Payment: Cash or Cheque/DD in favour of  
**Bangalore Branch of SIRC of ICAI**, payable at Bangalore

For Registration, Please contact:

**Ms. Geetanjali D.**, Tel: **080 - 3056 3513 / 3500**

Email : [blrregistrations@icai.org](mailto:blrregistrations@icai.org) | Website : [www.bangaloreicai.org](http://www.bangaloreicai.org)



## Clause by Clause Discussion on Union Budget-2017 - DIRECT TAXES & INDIRECT TAXES



Felicitation to CA. S Ramasubramanian, CA. H. Padamchand Khincha & CA. K K Chythanya



CA Cotha S Srinivas,  
Vice Chairman, SIRC of ICAI



CA Babu K Thevar,  
Chairman-SICASA, SIRC of ICAI



CA. H. Padamchand Khincha



CA. K K Chythanya



CA. S Ramasubramanian



Inauguration



CA. N Anand



CA. V Raghuraman



Adv. K. S Naveen Kumar



Felicitation to CA. V Raghuraman



Participants

### CA - RANK HOLDERS FROM BANGALORE

#### FINAL - NOV. 2016 EXAMS

Sl. No.	Registration No.	Name of the Student	Marks Obtained	Rank
1	SRO0372233	MAHITHI BHARATHESH	536	10
2	SRO0414601	KONIJETI SAI SRI LAKSHMI	499	27
3	SRO0399719	PRIYANKA K M	499	27

#### IPCC - NOV. 2016 EXAMS

Sl. No.	Registration No.	Name of the Student	Rank
1	SRO0561293	SIDHANT JAIN	25
2	SRO0562544	VRISHABH A GOLECHA	45



## SICASA - Budget 2017



## Speakers at Study Circle Meetings



CA Gururaj Acharya K



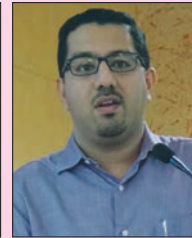
CA Naveen Khariwal G



CA Prashanth G S



CA Rudramurthy B. V.



CA Tarun Kumar Jain



Felicitation to CA Gururaj Acharya K



CA. Geetha A. B  
Chairperson, Bangalore Branch



CA. Supriya C C M



## Tumkur Programme







Felicitation to out going Chairman, CA Pampanna B. E.



Felicitating the newly elected Branch Chairperson CA. Geetha A. B  
(1st Lady Chairman of Bangalore Branch)



Managing Committee Members with Council Members



Committee Members with the Branch Staff

## Congratulations



**CA. Cotha S. Srinivas**  
for having elected as  
**Chairman, SIRC of ICAI**  
for the term 2017-2018.



**CA. B.T. Shetty**  
for having nominated as **Chairman,**  
**SICASA of Bangalore Branch of**  
**SIRC of ICAI** for the term 2017-2018.

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**Tel : 080 - 3056 3500, Fax : 080 - 3056 3542, www.bangaloreicai.org e-mail : bangalore@icai.org**

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