



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

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Together
We Can...



Knowledge



Collective wisdom gifted selflessly for the betterment of all is knowledge



... Change the
World

MVAT REFRESHER COURSE

13th, 20th, 27th, August & 3rd September, 2016

ALL REGION JOINT CONFERENCE

19th to 21st August, 2016

INTERNATIONAL TAX REFRESHER COURSE

20th, 27th August & 3rd, 10th September, 2016

YUVA – THE WAY AHEAD

28th August, 2016

FOUNDATION DAY CELEBRATION



FLAG HOISTING



MUSICAL PROGRAMME FOR SENIOR MEMBERS



HEALTH CHECK-UP



BLOOD DONATION



INAUGURATION OF MILE SUR MERA TUMHARA



MARATHON



LITERACY KITS DISTRIBUTION



WOMEN'S WING PROGRAMME



YOGA SESSION



TREE PLANTATION



Dear Colleagues,

We are witness to the age of information where we are bombarded by bits and bytes 24x7, and surrounded by multiple devices disseminating data at the click of a button. However, information is not knowledge.

Knowledge is the essence of the collective wisdom of individuals with great understanding of their subjects; the selfless gift of their insights and judgments to succeeding generations for shared benefit is knowledge.

CA Foundation Day Celebrations: July 1st is a day of pride and reason for celebration for the entire CA fraternity, wherein we proudly hoist the flag of our *alma mater* showing our loyalty and allegiance to our Institution. This year, the CA Foundation Day flag hoisting was done at the hands of Adv. Ashish Shelar, MLA, President of BJP Mumbai.

Foundation Day was celebrated across the Region with members taking part in the various social and cultural activities. Our ethos of 'Together We Can' was brought to life in the "11th Mile Sur Mera Tumhara" which saw more than 1000 members come together with their families and take part in the festivities.

WIRC conducted camps for blood donation, tree plantation, senior citizens eye and dental checkups, literacy kit distribution, awareness programmes on women's rights, marathon to raise green awareness and a poster making competition for Swachh Bharat Abhiyan.

Partner in Nation Building: As a committed partner in nation building, ICAI is dedicated to create awareness of 'New Income Declaration Scheme, 2016'. To that end, WIRC organised more than 75 public awareness programmes across the Region and invited IT Officers to speak at these events. WIRC also arranged a special webcast of Shri Arun Jaitley, Union Minister of Finance, who spoke on the scheme and how integral CAs were to this scheme.

WIRC recently sent Representations on Co-operative Society Audit and the GST Model Law to present our thoughts and bring about clarifications. This step was much appreciated both by members at large as well as the Regulators.

Brand Building: WIRC believes in positive brand building for the profession. The RG Area at BKC is one more step in enhancing our brand. It was inaugurated by ICAI President CA M. Devaraja Reddy with ICAI Vice President CA Nilesh Vikamsey. This landscaped garden adds a spot of beauty in the area and provides a green space for staff and members to relax.

Students' Conventions: WIRC organised multiple National Students' Conventions at Baroda, Nagpur and Vasai which saw many students taking part and availing benefits to help reach their goals.

National Women's Conferences: National Women's Conferences were held at Rajkot and Ahmedabad to unlock the potential of women CAs and help them grow.

Forthcoming Events: WIRC is organising a 3 day 'All Region Joint Conference' in August at Goa. The Conference will see analysis by learned CAs and would benefit us all professionally.

The 'International Tax Refresher Course' will cover critical topics like M&A, BEPS, TP, etc. It will help keep up with the latest developments and be aware of various tax implications.

The 'MVAT Refresher Course' will cover recent amendments, important judgments and provide clarity on MVAT issues.

Promoting Young Member's Skills: Knowing that young members love challenges, WIRC is organising 'Clash of Titans' a presentation competition for young members. We request members to motivate them by attending in large numbers.

We, as an institution, have a rich tradition of knowledge accumulation and dissemination through our research initiatives, seminars and workshops. The way forward is by pooling our knowledge resources into a common depository which would empower the Region as a whole, together....



OFFICE BEARERS

- CA. Shruti Shah, *Chairperson*
- CA. Hardik Shah, *Vice Chairman*
- CA. Kamlesh Saboo, *Secretary*
- CA. Shilpa Shinagare, *Treasurer*

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- CA. Vishnu Agarwal
- CA. Sarvesh Joshi
- CA. Sandeep Jain
- CA. Lalit Bajaj
- CA. N. C. Hegde, *Ex-Officio*

Forthcoming Events **Pg 4**

Law Updates **Pg 7**

Recent Judgments **Pg 11**

Together
We Can...

ALL REGION JOINT CONFERENCE

HOTEL RESORT RIO, ARPORA, GOA

19th to 21st August, 2016 – Friday to Sunday

Time	Topics	Speakers
3.00 p.m. to 6.00 p.m.	1st Day – Friday, 19th August, 2016 Inaugural Session: Chief Guest Shri Manohar Parrikar, Defence Minister of India Guest of Honour: CA. M. Devaraja Reddy, President, ICAI, CA. Nilesh Vikamsey, Vice-President, ICAI • GST – Critical Component of Indirect Tax Reforms – Session Chairman CA. Ashok Chandak, Past President, ICAI	CA. Prashant Deshpande
10.00 a.m. to 4.00 p.m.	2nd Day – Saturday, 20th August, 2016 • Concealment of Income and Penal Provisions Session Chairman CA. Sunil Talati, Past President, ICAI • Issues in CARO 2016 Session Chairman CA. G. Ramaswamy, Past President, ICAI • AS v/s IND AS Session Chairman CA. Manoj Fadnis, Past President, ICAI	CA. Rajiv Mehrotra CA. Khushroo Panthaky CA. M. P. Vijaykumar
10.00 a.m. to 1.00 p.m.	3rd Day – Sunday, 21st August, 2016 • In-depth Analysis of CENVAT Credit Rules Session Chairman CA. Bhavna Doshi, Past Chairperson, WIRC & Past CCM of ICAI • Professional Ethics and Code of Conduct Session Chairman CA. Amarjeet Chopra, Past President, ICAI	CA. Sunil Gabhawalla CA. Chandrashekar Vaze

12

CPE Hrs

FEES

Members (Non Residential)
₹ 3,500/-

Non-Members
(Non Residential)
₹ 4,000/-

Members (Residential)
₹ 12,000/-
(Twin Occupancy)

Non-Members (Residential)
₹ 14,000/-
(Twin Occupancy)

Accompanying Spouse
₹ 10,000/-
(Not Attending Conference)

Children (Above 6 yrs.)
₹ 3,200/-
(With Additional Bed)

Children (Below 6 yrs.)
Free
(Without Additional Bed)

Chief Co-ordinators / Mobile Nos.

CA. Shruti Shah, Chairperson, WIRC	9892407988
CA. Abhay Chhajed, Chairman, CIRC	9303104477
CA. Anirban Datta, Chairman, EIRC	9830853547
CA. Deepak Garg, Chairman, NIRC	9811064105
CA. E. Phalgun Kumar, Chairman, SIRC	9441886303

Conference Co-ordinators / Mobile Nos.

CA. Kamlesh Saboo, Secretary, WIRC	9819195333
CA. Abhijit Kelkar, RCM	9422126890
CA. Sandeep Jain, RCM	9819788099
CA. Yeshwant Kamat, Chairman, Goa Branch	9766369380

For Registration and Further Details Contact – 0832 - 2438516 | E-mail: goa@icai.org

J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
06/08/2016 Saturday 3 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 600/-	Seminar on HUF and Family Arrangement • Tax Planning through HUF and Family Arrangement • Preparation of Will and Documentation in relation to HUF and Family Arrangement	CA. Vimal Punmiya	CA. Priti Savla 9321426883 CA. Hardik Shah 9825510422 CA. Satyanarayan Mundada 9422080814	CA. Aniket Kulkarni 9821690559 CA. Kalpesh Kothari 9029371777 CA. Sajjan Agrawal 9322281706
13/08/2016 20/08/2016 27/08/2016 03/09/2016 Saturdays 12 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 2,000/-	MVAT Refresher Course 13th August, 2016 Amendments under the MVAT & CST Acts with special reference to amendments impacting MVAT Audit for 2015-16 20th August, 2016 Recent Important Judgments 27th August, 2016 Intricate Issues under the ITC 3rd September, 2016 Intricate Issues in In-transit sales, Branch transfers and High Seas sales	CA. Sujata Rangnekar CA. C. B. Thakar CA. Vikram Mehta CA. Rajat Talati	CA. Manish Gadia 9820537986 CA. Kamlesh Saboo Secretary, WIRC 9819195333 CA. Hardik Shah 9825510422	CA. Gaurav Save 9969001607 CA. Sunil Sharma 9769949829 CA. Aumkar Gadgil 8007976830 CA. Viral Chheda 9833594045

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
06/08/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Tax Audit & Documentation <ul style="list-style-type: none"> • Issues in clauses of Tax Audit • Standards on Auditing <i>vis-a-vis</i> Tax Audit • Documentation for Tax Audit & Peer Review • Various other legal issues in Tax Audit 	CA. Vijay Kewalramani CA. Abhay Kamat Eminent Faculty CA. Ketan Vajani	CA. Vishnu Agarwal 9324544607 CA. Sarvesh Joshi 9822022292 CA. Purushottam Khandelwal 9825020844	CA. Ritesh Hibare 9773418343 CA. Swati Bhatkar 9967537989 CA. Milind Joshi 993003393
20/08/2016 27/08/2016 03/09/2016 10/09/2016 Saturdays 12 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 2,000/-	International Tax Refresher Course 20th August, 2016 <ul style="list-style-type: none"> • International Taxation – A perspective – Tax treaty interpretation and application and issues International Tax planning – principles and issues Corporate Tax compliances for double tax relief • BEPS – A paradigm shift towards era of global tax transparency – Action plans and impact on international taxation from Indian perspective 27th August, 2016 <ul style="list-style-type: none"> • International tax aspects of Permanent Establishments – Principles, Controversies, latest developments including global mobility issues from corporate and personal tax perspectives. BEPS impact on PE • Royalties and Fees for technical services – Principles, Controversies, latest developments including global mobility – India perspective Article 7 and Article 13 interplay with case studies 3rd September, 2016 <ul style="list-style-type: none"> • Cross Border Transactions – M&A – Taxation principles, evolving judicial landscape and key debates Intangibles – Planning perspectives with Tax consequences POEM, GAAR – pressure points and way forward • M&A outlook – Post BEPS implementation – Corporate tax outlook Transfer Pricing outlook 10th September, 2016 <ul style="list-style-type: none"> • Transfer Pricing in India – Key principles and latest developments including BEPS insights Trend of litigations and remedies with comparative analysis • Dispute Resolution Mechanisms in India – Forums, technical principles & recent trends 	CA. Hitesh Gajaria CA. Radhakishan Rawal CA. Rekha Bagri CA. Shreyas Shah CA. Pranav Sayta CA. Nandkishore C. Hegde CA. Samir Gandhi CA. Sunil Choudhary	CA. Rakesh Alshi 9819427242 CA. Kamlesh Saboo Secretary, WIRC 9819195333 CA. Vikrant Kulkarni 9881880073	CA. Shrenik Doshi 7710077038 CA. Akshay Tambe 9892701496 CA. Nitin Jaisinghani 9967539598 CA. Meera Joiser 9819354164
17/09/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Mutual Funds, PMS & Capital Mkts <ul style="list-style-type: none"> • The Indian Scenario – Portfolio Management and MF – Overview, Present and Future • The Indian Mutual Fund Industry – Overview of Equity Products, Investment Mechanism/Process, MF vs. Direct Equity • The Indian Mutual Fund Industry – Overview of Debt Products, Investment Mechanism/Process, Challenges • Recent Regulatory Changes & Intricacies Involved in MF and PMS Regulations • Internal audit of MF and PMS • Accounting and Statutory Audit Issues and Challenges relevant to Mutual Funds and PMS • Role of AMFI – Present SEBI Regulations, Distributors, and Future SRO 	Eminent Faculty Eminent Faculty Eminent Faculty CA. Viraj Londhe CA. Vidya Barje CA. Milind Ranade* Shri Balakrishna Kini*	CA. Drushti Desai 9820335923 CA. Pradeep Agrawal 9898560967 CA. Vishnu Agarwal 9324544607	CA. Mukund Mall 9322224142 CA. Nikita Mall 9969873294 CA. Mamta Parsekar 9820613536

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
01/10/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Companies Act, 2013 <ul style="list-style-type: none"> Incorporation of Companies; Exemptions to Private Limited Cos. Recent Amendments in Companies Act, 2013 Loans, Borrowings, Investments and Deposits Private Placement, Preferential Allotment, Registration of Charges, Powers of Directors, Related Party Transactions 	CS. Anant Amdekar* CA. Shrinivas Joshi CS. Makarand Joshi CA. Manish Sampat	CA. Purushottam Khandelwal 9825020844 CA. Sandeep Jain 9819788099 CA. Abhijit Kelkar 9422126890	CA. Falguni Padia 8237442806 CA. Aditi Chaturvedi 9768350383 CA. Bipeen Mundade 9223290561
08/10/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on IFC <ul style="list-style-type: none"> Objectives and importance of the controls Group Exercise: Building Internal Controls in Financial Reporting Internal Control Framework – COSO 2013 Framework Companies Act: Internal Control Testing Case Studies Testing of controls – Methodology and Approach Open Forum / Q & A 	Shri Manoj Jain & CA. Kaushal Mehta	CA. Sandeep Jain 9819788099 CA. Pradeep Agrawal 9898560967 CA. Priyam Shah 9824096112	CA. Sachin Holmukhe 9820561266 CA. Dilkhush Shah 9769643909 CA. Vikram Joshi 9821733286

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai (Classroom)

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
10/09/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Workshop on Media & Entertainment Industry <ul style="list-style-type: none"> Overview, Growth of Media and Entertainment Industry and Opportunities for Professionals Financial Reporting and Controls in Media and Entertainment Industry Revenue Stream and Audit in Media and Entertainment Industry Legal Aspect, IPR and Compliance in Media and Entertainment Industry 	CA. Anil Singhvi* CNBC AWAAZ CA. Lalit Chatnani CA. Manish Tibrewal Adv. Vimochan Naik	CA. Vishnu Agarwal 9324544607 CA. Kamlesh Saboo Secretary, WIRC 9819195333 CA. Manish Gadia 9820537986	CA. Rakesh Tulsyan 9869765155 CA. Ashish Bakliwal 9821968858 CA. Ashwin Raje 9769908479
17/09/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Workshop on Startup Companies <ul style="list-style-type: none"> Startup Simplified – Journey from Idea to Realisation – Detailed discussion on a) Essential seeds for an Idea to become reality; b) How to make business plan and platform to present to Angel Investor/ PE c) Various Govt. Initiatives under Startup India and Standup India campaign Use of social media in business activity 	CA. Manish Hingar Shri Prakash Mundada	CA. Shilpa Shinagare Treasurer, WIRC 9820053395 CA. Sushrut Chitale 9821112904 CA. Umesh Sharma 9822079900	CA. Susanna Cherian 7045144985 CA. Ami Dabhalla 9819004021 CA. Dhruv Gaglani 9619796967

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai (Student Programme)

Day & Date	Time	Fees	Topic(s)
Wednesday, 10/08/2016	10.00 a.m. to 5.00 p.m.	₹ 100/-	Placement Programme for Articleship for Students
Wednesday, 10/08/2016	10.00 a.m. to 5.00 p.m.	₹ 1,500/-	Placement Programme for Articleship for Firms / Individuals
Friday, 12/08/2016	10.00 a.m. to 5.00 p.m.	₹ 200/-	Placement Programme for Industrial Trainee for Students
Friday, 12/08/2016	10.00 a.m. to 5.00 p.m.	₹ 3,000/-	Placement Programme for Industrial Trainees for Companies
Chief Co-ordinators / Mobile Nos.		Students Co-ordinators / Mobile Nos.	
CA. Pradeep Agrawal 9898560967 CA. Satyanarayan Mundada 9422080814		Mr. Mohit Agarwal 7877498939 Mr. Saurabh Chokhani 8452995950 Mr. Mohit Kumar Yadav 9673750515	

DIRECT TAX

(Contributed by CA. Haresh P. Kenia & CA. Deepak Lala)

Section 206C – Collection at Source – Clarification on amendment made in Finance Act, 2016 [240 Taxman (St.) 1]

In order to reduce the cash transactions in sale of goods and services, Finance Act, 2016 has expanded the scope of section 206C(1D) to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of any goods (other than bullion and jewellery) or providing of any services (other than payment on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees. Further, with a view to bring high value transactions within the tax net, it has been provided in sub-section (1F) of section 206C of the Act that the seller who receives consideration for sale of motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer. Any person who obtains in any sale, the goods of the nature specified in sub-section (1D) or (1F) of section 206C is a buyer.

The amendments brought in section 206C by Finance Act, 2016 are applicable from 1st June, 2016.

The CBDT has received number of queries about the scope of the provisions and the procedure to be followed. The CBDT *vide* Circular No. 22/2016 (F. No. 370142/17/2016-TPL) dated 08/6/2016 clarified the points raised by issue of circular in the form of questions and answers. There are seven FAQ's. The detailed circular is available at above page of the magazine.

Bad debts u/s. 36 (1) (vii) of the Income-tax Act – Admissibility of claim of deduction of bad debts [239 Taxman (St.) 457]

The CBDT *vide* Circular No. 12/2016 dated 30/5/2016 clarifies that the claim of any debt or part thereof in any previous year will be allowable u/s. 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of account of the assessee for that previous year and it fulfils the conditions stipulated in sub-section (2) of section 36 of the Act. Accordingly, no appeal may henceforth be filed on this ground and appeals already filed if any on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.

This is in view of the fact that the various proposals received by the CBDT regarding filing of appeals/pursuing litigation on the issue of allowability of bad debts that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that a debt is irrecoverable. The CBDT has taken this view in accordance with the decision of Supreme Court in the case of TRF Ltd. in CA Nos. 5292 to 5294 of 2003 *vide* judgment dated 9/2/2010 (190 Taxman 391), has held that the position of the law is well settled. "After 1/4/1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of account of assessee."

E-filing of appeals – Extension of time limit. [239 Taxman (St.) 459]

The CBDT *vide* Circular No. 20/2016 (F. No. 279/MISC/M-54/2016/ITJ) dated 26/5/2016 extends the time limit for filing of e-appeals before the Commission of Income-tax (Appeals). E-appeals which were due to be filed by 15/5/2016 can be filed up to 15/6/2016. All e-appeals filed within this extended period would be treated as appeal filed in time.

Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 1/3/2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and / or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12/5/2016 for individuals and from 19/5/2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

The matter was examined by the board and in order to mitigate any inconvenience caused to the tax payer on account of the new requirement of mandatory e-filing appeals, decided to extend the time limit for filing such e-appeals.

Equalisation Levy Rules, 2016 [239 Taxman (St.) 460]

The Central Government *vide* Notification No. SO1905(E) [No. 38/2016 (F. No. 370142/12/2016/TPL)] makes the rules for carrying out the provisions of Chapter VIII of the said Act relating to Equalisation levy. These rules may be called the Equalisation Levy Rules, 2016. It shall come into effect from 1/6/2016. The notification is issued in exercise of the power conferred by section 179(1) & (2) of the Finance Act, 2016. It contains the provision for payment of Equalisation Levy, statement of specified services, time limit to be specified in the notice calling for statement of specified services etc.

Assessment – Extension of scheme for e-assessment [239 taxman (St.) 417]

The CBDT *vide* Press Release dated 25/5/2016 intimates as under.

Paperless assessment/e-mail based assessment on a pilot basis was commenced in the Financial Year 2015-16 in non-corporate charges of five cities i.e. Ahmedabad, Bengaluru, Chennai, Delhi and Mumbai. The e-mail based assessment scheme has now been extended to two more cities, namely Hyderabad and Kolkata during the current financial year. It shall now be open for all the taxpayers assessed in these seven cities, whose cases have been selected under scrutiny to opt for being scrutinised under the e-mail based paperless assessment proceedings by giving their consent. However, in case of practical difficulties in submission of scanned copies of voluminous documents through e-mail, the documents could be received by the Assessing Officer in physical form after recording reasons for the same.

All the taxpayers of the aforesaid seven cities, whose cases are picked up for scrutiny, may convey their consent to their respective assessing officers in order to avail the facility of e-mail based paperless assessment proceedings.

MAHARASHTRA VAT (Contributed by CA. C. B. Thakar)

Notifications

- (i) The Government of Maharashtra has issued notification dated 28/4/2016, under Rule 17A(1)/(2) of the MVAT Rules, 2005 by which new electronic returns in Forms 101, 103 & 105 are notified.
- (ii) The Commissioner of Sales Tax has issued notification dated 4/5/2016, by which powers and duties are delegated

under Maharashtra Settlement of Arrears in Disputes Act, 2016.

- (iii) The Commissioner of Sales Tax has issued notification dated 9/5/2016, by which 'Advance Ruling Authority' is constituted.

Circulars

The Commissioner of Sales-tax has issued Circular bearing No. 19T of 2016 dated 30/6/2016 wherein FAQs on Settlement of Arrears in Disputes Act, 2016 are given.

GUJARAT VAT

(Contributed by CA. Kishor R. Gheewala)

Provisional Refund

Vide Notification No. (GHN-34) VAR-2016(38)/TH dated 25th May, 2016, new sub-rule (5A) is inserted in Rule 37 to provide for full amount of Provisional Refund up to ₹ 100,000/- within 30 days of submission of documents, subject to condition of holding Certificate of Registration for more than 2 years.

ITC of Excess Tax Paid

In case of M/s. Samrat Namkeen Pvt. Ltd., S.A. No. 97/2014, Honourable GVAT Tribunal has, vide its decision dated 30/4/2016, held that if the seller has recovered tax at higher rate than applicable but has paid full amount of tax recovered in Government Treasury, the purchaser is entitled to ITC of full amount of tax paid by him including the excess tax paid to the seller.

CORPORATE LAWS

(Contributed by CA. Rahul Joglekar)

MCA (www.mca.gov.in)

MCA Notification No. G.S.R(E) dated 14th July 2016 – Companies (cost records and audit) Amendment Rules, 2016

MCA has amended the Companies (Cost Records and Audit) Rules 2014 with the aforesaid notification. The amendments deal with aspects like definition of cost audit report, certifications before appointment of cost auditor, provisions for removal of cost auditor, filing of returns with ROC etc. The amendments also deal with applicability of cost records and audit to certain industries. For complete text of the notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/Rules_15072016.pdf.

SEBI (www.sebi.gov.in)

SEBI Circular No. CIR/CFD/FAC/62/2016 dated 5th July 2016 – Revised Formats for Financial Results and Implementation of Ind-AS by Listed Entities

SEBI has issued the aforesaid circular to prescribe various guidelines for implementation of Ind-AS for listed entities. The circular specifies formats for declaration of Unaudited/Audited quarterly financial results by the listed companies. It also lays down detailed guidelines with respect to Implementation of Ind-AS during the first year i.e., financial year 2016-17 and various other clarifications on issues with regard to Ind-AS implementation. For complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1467712561526.pdf.

CENTRAL EXCISE

(Contributed by CA. Jayesh Gogri)

Notifications

Non-Tariff

No physical verification of premises in case of registration of readymade garment manufacturers

Manufacturers of branded readymade garments and textile made up articles, falling under Chapters 61, 62 or 63 (except laminated jute bags falling under Tariff ID 6305, 63090000 or 6310) and having RSP of ₹ 1,000/- and above, are covered under Central Excise levy vide Union Budget 2016-17. Accordingly, the manufacturers are required to get registered and pay appropriate duties.

Generally, the premises of manufacturer are physically verified before granting registration under Central Excise Laws. However, these manufacturers of branded readymade garments are granted exemption from mandatory physical verification of manufacturing premises vide amendments to Notification No. 35/2001-Central Excise (NT) dated 26th June, 2001.

(Notification No. 32/2016-CE (NT) dated 11th July, 2016)

Circulars

Clearance of bunker fuels to Indian Ship/Vessel carrying containerised cargo

IFO 180 CST and IFO 380 CST bunker fuels for use in specified Ships or Vessels is granted conditional exemption from Central Excise Duty vide Mega Exemption Notification No. 12/2012-CE dated 17th March, 2012.

In view of representation from trade and industry, Board has specified the procedure and conditions for supply of bunker fuel from the warehouse of the Oil Manufacturing Companies (OMCs) to the eligible ships/vessels.

Therefore, now, warehousing facility is extended to such goods when intended for direct supply from warehouse. Further, bunker fuel from refinery to the warehouses of OMCs and for further supply to the eligible ships and vessels shall be cleared following existing warehousing and export warehousing procedure and also new procedure as prescribed under this Circular.

(Notification No. 31/2016-CE (NT) dated 4th July, 2016 and Circular No. 1034/22/2016 - CX dated 1st July, 2016)

Recovery of confirmed demands during the pendency of stay application

It is clarified that no recovery shall be made during the pendency of stay application before Commissioner (Appeals) or CESTAT for periods prior to 6th August, 2014. For subsequent period, instructions contained in Circular No. 984/08/2014 - CX dated 16th September, 2014 shall be continued to be followed. Further, if no stay has been granted by Hon'ble High Court or Hon'ble Supreme Court against the Order of Hon'ble Tribunal or Hon'ble High Court respectively, demand shall be recovered only after expiry of 60 days from the date of order.

(Circular No. 1035/23/2016 - CX dated 4th July, 2016)

No restrictive meaning of 'site' shall be construed for excise duty exemption on goods manufactured at the site for use in construction work at such site

Exemption is provided to goods falling under Chapter 68 (except 6804, 6805, 6811, 6812 and 6813) when manufactured at construction site for use in construction work at such site.

Though the expression 'site' is defined under the said entry, in view of divergent views, it is clarified that 'site' cannot be given a restrictive meaning. So long as the premises fulfils the prescribed conditions, distance thereof would not be a criteria to decide eligibility of the exemption.

(Circular No. 1036/24/2016 - CX dated 6th July, 2016)

Clarification regarding classification of Tamarind Kernel Powder under Central Excise Act, 1985

The circular clarifies that tamarind kernel powder (either modified or unmodified) is classifiable under Tariff ID 1302 32 90 considering the same as a product used as thickener which is derived from seeds. Specific entry of powder of tamarind given under Chapter 11 is for products of milling industry i.e., for powder derived from pulp i.e., fleshy edible portion of tamarind fruit and not from seeds of tamarind.

(Circular No. 1037/25/2016 - CX dated 19th July, 2016)

Clarification on manual signature on digitally signed invoices

It is clarified that a manufacturer or a service provider who opts to issue invoices authenticated by digital signature may print a copy of such invoice and sign them manually and forward the same to such customers who are unable to accept or receive the digitally signed invoices. Such invoices shall be valid to avail CENVAT credit.

(Circular No. 1038/26/2016 - CX dated 19th July, 2016)

Ministry of Finance Clarification

Government accepted recommendations of high level committee to interact with trade and industry on tax law issues with respect to excise duty on jewellery also decided to increase SSI eligibility and exemption limit for manufacturers of articles of jewellery or parts of articles of jewellery or both.

(Ministry of Finance dated 13th July, 2016)

SERVICE TAX

(Contributed by CA. Rajiv Luthia)

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

Central Government, vide Notification No. 35/2016-ST dated 23rd June, 2016, has exempted all the taxable services from levy of Krishi Kalyan Cess in respect of invoices which have been issued on or before the 31st May, 2016 subject to condition that the provision of such service has also been completed on or before the 31st May, 2016.

Central Government, vide Notification No. 36/2016-ST dated 23rd June, 2016, has exempted the taxable services of transportation of goods by a vessel from outside India up to the customs station in India with respect to which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of service tax. The said exemption is subject to the condition that the import manifest or import report required to be delivered u/s. 30 of the Customs Act, 1962 has been delivered on or before the 31st May, 2016 and the service provider or recipient produces Customs certified copy of such import manifest or import report.

FEMA

(Contributed by CA. Manoj Shah, CA. Sudha G. Bhushan & CA. Mitesh Majithia)

Settlement System under Asian Clearing Union (ACU)

A. P. (DIR Series) Circular No. 81 dated June 30, 2016

Presently participants in ACU mechanism have the option to

settle their transactions either in 'ACU Dollar' or in 'ACU Euro'. The 'ACU Dollar' and 'ACU Euro' is equivalent in value to one US Dollar and one Euro, respectively. As the payment channel for processing 'ACU Euro' transactions is under review, it has become necessary to temporarily suspend operations in 'ACU Euro' with effect from July 1, 2016. Accordingly, all eligible current account transactions including trade transactions in 'Euro' are permitted to be settled outside the ACU mechanism until further notice.

External Commercial Borrowings (ECB) – Approval Route

A. P. (DIR Series) Circular No. 80 dated June 30, 2016

In terms of the extant direction, ECB cases under the approval route were required to be considered by an Empowered Committee set up by the Reserve Bank based on the specified parameters.

The Reserve Bank of India has, in order to rationalise and expedite the approval process, decided that only ECB proposals under the approval route received by the RBI which are above a certain threshold limit (refixed from time-to-time) be placed before the Empowered Committee.

Review of Foreign Direct Investment (FDI) Policy on various sectors

Press Note No. 5 (2016 Series) dated June 24, 2016 issued by the Department of Industrial Policy & Promotion (DIPP)

Consequent to the decision made by the Government of India on June 20, 2016 to liberalise and simplify the FDI policy on various sectors, the DIPP has issued a Press Note to give effect to the said decisions and to amend the Consolidated FDI Policy Circular of 2016 dated June 7, 2016.

For detail please refer the aforesaid Press Note available at DIPP website at – http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2016.pdf

Discontinuation of Reporting of Bank Guarantee on behalf of service importers

A. P. (DIR Series) Circular No. 1 dated July 7, 2016

On a review of the reporting requirements and to reduce the burden of compliance, AD Category-I banks are advised to discontinue submission of reports about invocation of bank guarantee issued in favour of a non-resident service provider on behalf of their resident customers for service imports. However, they may maintain records of such invocations and furnish the required details to RBI whenever sought.

CO-OPERATIVE SECTION

(Contributed by CA. Ramesh Prabhu)

Generating the online e-order by the auditor for 2016-17 is in operation on Government website: www.mahasahakar.maharashtra.gov.in.

As per section 81(1) of the Maharashtra Co-operative Societies Act, 1960 read with section 75(2A), every society shall appoint a Government approved panel auditor for carrying out the audit for the current year.. Therefore the societies who are holding the AGM after 1st April 2016 for the financial year 2015-16 are going to appoint the auditors. The auditors while accepting the audit should see that he is not exceeding more than 20 societies audit whose paid up capital is more than ₹ 1 Lakh and also he is not the auditor of the same society continuously for more than three years. After the appointment, the auditors

should ensure that the Society files its return of appointment of auditors as provided under section 79(1B) within one month of the AGM from the society login and also the auditors generate e-order for the appointment of auditors by his own login on the departmental website : www.mahasahakar.maharashtra.gov.in. In case, such e-orders are not generated by the auditors this year by 31st October, 2016 for the appointment of auditors for the year 2016-17, the District Deputy Registrar shall use the powers given under proviso to section 81(1) of the MCS Act to appoint the auditors for such societies considering that such societies have not appointed the auditors.

Proviso Orders for FY 2015-16: The auditors are expected to send the letters to the co-operative societies as per the address available on the website of the Government and if the same is returned or address is incomplete, communicate to the Dy./ Assistant Registrar by e-mail and hard copy of the letters to provide the complete address or inform the societies to communicate with DDR appointed auditor by e-order. The panel auditors are advised to keep the documentary evidences showing all possible actions and efforts were made by them to do the audit of the societies issued under proviso. The panel auditors and the CAs are also advised to facilitate the societies in getting them enrolled on the mahasahakar website and also to facilitate the societies in getting mandatory Returns u/s. 79(1A) & (1B) uploaded on mahasahakar website within the due date and the same can be done as a professional assignment so that the issue of Proviso Orders for FY 2016-17 would be minimal.

The review meetings by various DDRs across Maharashtra are being conducted. Auditors review meeting of Mumbai DDR3 and DDR4 held on 15th June, 2016 was attended by CA. Shilpa Shinagare, Chairperson Co-operative Committee of WIRC of ICAI and CA. Sandeep Jain, Chairman of PDC of WIRC of ICAI. Considering the urgency of review meeting held by the Hon'ble Commissioner on 17th June, 2016 of all DDRs at Pune, representations and issues faced by the auditors was submitted to the Hon'ble Commissioner for co-operation on 16th June, 2016. The same is uploaded on the WIRC website under Co-operative Section.

Audit Report Formats uploaded on WIRC website: Considering the need of the hour and to facilitate the members for the various audit report format to be used for different types of Societies (Audit Memo Nos. 1 to 35) has been uploaded on the Co-operative Section of WIRC website. The audit certificate in Form No. N-1 for banks and N-2 for other types of societies, various updated circulars, audit fees notifications, circulars dated 7th June, 2016 regarding 100% audit compliance and circulars dated 19th May, 1997 regarding the audit report to be given in parts A, B and C and its contents. The various formats like appointment letter, audit programme, management representation letters etc. schedules to be attached as part of audit report and step-by-step approach for audit has been updated in the Resource Section of the WIRC website as the course material given to the participants in the full day co-operative programme of WIRC held on various dates.



INFORMATION TECHNOLOGY UPDATE CORNER

Welcome! WIRC has started a new series on latest updates in field of Information Technology. The 'IT Update Corner' is intended to keep members abreast with news and views on the topic with short url link to read the update in detail on the source webpage.

#CyberSecurity #FinancialReporting: The impact of cyber-crime on financial reporting and disclosure challenges is increasing. Cyber-crime has become a chronic, enterprise-wide risk that poses one of the most significant threats to public companies. This significantly impacts the business entity's willingness to disclose accurate loss amount and requires auditor to disclose weakness in internal control systems. The related party disclosures are increasingly difficult to trace given rapid movement in online trades and near anonymity of cyber space. This also puts lot of pressure on audit committee. Read more: <https://goo.gl/HibqNY>.

#BigDataAnalytics #TradeMis invoicing #TransferPricing: In a major research involving big data analytics, the new United Nations Conference on Trade and Development (UNCTAD) report highlights that China, Germany, India, Italy, Japan, the Netherlands, Spain, Switzerland, Britain and the US among countries that are benefitting from 'trade misinvoicing' practiced by a large number of Commodity Dependent Developing Countries (CDDCs). Trade misinvoicing – involves deliberately misreporting the value of a commercial transaction on an invoice submitted to customs and continues to be used as a key mechanism of capital flight and illicit financial flows from developing countries. Read more: <http://goo.gl/o58A6A>.

#CyberCrime #Ransomware: Cyber-ransom has created major panic in hospitals across the world. Specifically in USA, after Obama administration pushed \$35 billion incentive programme to pay doctors and hospitals to convert patient data to electronic records with idea to modernise the health care industry. But in pushing thousands of healthcare providers into digital age before they are ready has resulted in weekly ransom threats. Cyber criminals freeze patient records, sometimes even hijack medical devices which are digitally connected to hospital internal systems delaying surgeries. The ransom attacks are mounting so rapidly that they have challenged financial stability of some health care providers. Read more at: <http://goo.gl/ji15bK>.

#IoT #InternetOfThings #CyberSecurity: The Internet of Things (IoT) has become one of the biggest areas of concern for cyber security experts. A smart power grid automatically gathers and acts on information, such as behaviours of suppliers and consumers, to improve efficiency of power grid. It is an important market for IoT and there are 14 ongoing smart grid projects in India. The link provides detailed graphic data on the Indian smart grid project, sector-wise Indian firms working on IoT and threat agents in the IoT. Read more: <http://goo.gl/EX6cZB>.

#OpenData Open Government Data (OGD): Platform India is a platform for supporting Open Data initiative of Government of India. The portal is intended to be used by Government of India Ministries/Departments their organisations to publish datasets, documents, services, tools and applications collected by them for public use. This portal provides huge volume of data, visualisations, infographics, sectoral data, high value datasets - almost all of which is downloadable in CSV format. One can also suggest a dataset or create visualisation with your own data. This serves as great tool for data research and analytics. Visit to know more and for using it: <https://data.gov.in/>.

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CA. Ajay Dave

DIRECT TAX

(Contributed by CA. Paras K. Savla & CA. Hemant Shah)

High Courts

S. 36(1)(va), 43B Employees contribution to provident fund

Although technical reading of Section 43B and the provisions of sub-Section (2) of Section 24 (x) read with Section 36(1)(va) of the Act creates the impression that the employees' contribution would continue to be treated differently under a different head of deduction, as the head of deduction is separate under Section 43B and Section 36 of the Act but on a broader reading of the amendments made to Section 43B repeatedly and the intention of Parliament, there appears to be sufficient justification for taking the view that the employees' and the employer's contribution ought to be treated in the same manner. Relying on the decisions of the Bombay High Court in *CIT vs. Ghatge Patil Transports Ltd.* [2014] 368 ITR 749 (Bom.) and Punjab and Haryana High Court in the case of *CIT vs. Hemla Embroidery Mills (P.) Ltd.* [2014] 366 ITR 167 (P.&H.), it was held that employees contribution to provident fund paid after specified due date but before the due date of filing return of income be allowed as deduction – *Bihar State Warehousing Corporation Ltd. vs. CIT* [2016] 71 taxmann.com 247 (Patna).

S. 37(1) Allowability of expenditure on stamp duty

Stamp duty paid by the appellant during the year under consideration is a compulsory statutory levy and would not restrict the profits of the future years and ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years. However, in a case where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of "matching concept" is satisfied – *Prithvi Associates vs. ACIT* [2016] 71 taxmann.com 163 (Gujarat).

S. 45 Short / Long term gains

By virtue of the agreement dated 18th May, 1980 the assessee had interest in the land. It was observed that consequent to the vendor not honouring the agreement dated 18th May, 1980, all that the appellant had was a right to seek specific performance which he sought to enforce by filing the suit. It is only on the Consent Terms being filed in Court that the appellant got ownership and possession on 11th March 1988. Assessee sold said land on 29th November 1988. On the facts of the case it was held that gains arising on sale of land are short term capital gains – *late Shri H. G. Malkani vs. CIT ITA No. 75 of 2001 (Bombay)* Order dated 29/6/2016.

S. 245C Maintainability of application before Settlement Commission

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 comes into effect from 1/7/2015 and the petitioners had filed their Return of Income on 21/5/2015 and notice was issued under Section 148 of the Income-tax Act by the Assessing Officer on 29/5/2015 which is before coming into effect of the provisions of the Black Money Act, 2015. It was held that the applications submitted by the petitioners before the Commission are maintainable – *Arun Mammen Kandathil M. Mammen vs. UOI* [2016] 71 taxmann.com 160 (Madras).

ITAT

S. 28 increase in option on shares

As per the terms of the shareholder agreement, assessee could sell its shares only to the specified shareholder. As per the terms of agreement assessee was entitled for the price which increase at fixed rate, irrespective of the performance of the company. It was held that income which is accrued at definitive rate (interest) is income from business and not income from other

sources – *Mahindra Telecommunications Investment (P.) Ltd. vs. ITO* [2016] 69 taxmann.com 431 (Mumbai-Trib.).

S. 37(1) Explanation 2, Voluntary CSR payment

Payment made on account of corporate social responsibility on voluntary basis, is not incurred under the statutory obligation and hence it was held that said expenditure cannot be disallowed under Explanation 2 of Section 37(1) – *ACIT vs. Jindal Power Ltd.* [2016] 70 taxmann.com 389 (Raipur-Trib.).

S. 56(2) Interest on motor accident compensation

Unless a receipt is not an income, there is no occasion for the provisions of Sections 56(1) or 56(2) coming into play. Section 56 does not decide what is an income. What it holds is that if there is an income, which is not taxable under any of the heads under Section 14, i.e., items A to E, it is taxable under the head 'income from other sources'. The receipt being in the nature of income is a condition precedent for Section 56 coming into play, and not *vice versa*. To suggest that since an item is listed under Section 56(2), even without there being anything to show that it is of income nature, it can be brought to tax is like putting the cart before the horse. The very approach of the authorities below is devoid of legally sustainable merits. The ITAT also directed the Central Board of Direct Taxes to issue appropriate administrative instructions and ensuring that what was brought as a measure of relief to the taxpayers is not used, by the field officers, as a source of taxation. It was accordingly held that Interest awarded by Court on motor accident compensation, being a capital receipt, is not taxable as income – *Urvi Chirag Sheth vs. ITO* [2016] 70 taxmann.com 33 (Ahmedabad-Trib.).

S. 56 Sum received from the trust by beneficiary

The trust as such is not having a separate legal existence, but represents only its beneficiaries. Income of the trust is the income of the beneficiary. The trustees in a discretionary trust only have the power to decide when and how much money to distribute among the beneficiaries. This does not mean that they are the owners of the income. Thus what was received by the assessee as a beneficiary from the thirteen trusts were nothing but his own income in his status as a beneficiary of the said trust. What has flown from the trustee to the beneficiary is the income the trustee collected on behalf of the beneficiaries. Once the character of the income in the hands of the beneficiary takes the same colour as that of the income in the hands of the trust, and once it is accepted that trust as such is not having a persona different or distinct from that of the beneficiary, it naturally flows that such income or receipt is not received without consideration. Hence it was held that money received by the assessee from various trusts could not have been taxed u/s. 56(2)(vi) of the Act – *Mrs. Sharon Nayak vs. DCIT* [2016] 70 taxmann.com 185 (Bengaluru-Trib.).

Ss. 154, 148 Parallel proceedings

The proceedings u/s. 147 cannot stand during the continuation of proceedings u/s. 154 – *Sushil Kumar Jain vs. ACIT* [2016] 71 taxmann.com 136 (Delhi-Trib.).

INTERNATIONAL TAXATION

(Contributed by CA. Hinesh Doshi & CA. Ronak Soni)

DDIT vs. Reliance Industries Limited [TS-278-ITAT-2016 (Mum.)]

Reliance Industries Ltd. made payments to residents of different countries such as Australia, Canada, Singapore, Japan, Netherlands, Germany, USA, UK, France etc., for supply of embedded software for its oil and gas business, and contended it not as royalty under respective DTAs. Revenue's stand was that 'software' is covered under the term 'literary work' in view of the definition under the Indian Copyright Act. ITAT held it

as a case of sale of copyrighted product and not copyright as assessee has simply purchased the copyrighted work embedded in the CD-ROM. Moreover, to constitute 'royalty' under the treaty, the consideration should have been paid for the use of or the right to use the copyright in the "literary work and not the 'literary work' itself". Also as the software purchases were related to pre-amendment period ITAT held that assessee could not have foreseen such amendment and therefore cannot be held liable to deduct TDS.

Nortel Networks India International Inc. vs. Director of Income Tax [TS-241-HC-2016] (Delhi HC)

The assessee, a USA incorporated company and a part of Nortel Group, has a wholly owned Indian subsidiary Nortel India who entered into a contract with Reliance Infracom for supply of equipment and on the same date immediately after signing assigned the contract to assessee without any consideration. AO concluded that assessee did not have any financial or technical ability to perform the equipment contract and thus cited assessee as a "shadow company" of Nortel Group and concluded that the Nortel India constituted assessee's PE in India (both Fixed place PE as well as Dependent Agent PE). HC examined as to whether any income from supply of equipment, could be taxed in India. HC held "by virtue of Explanation 1 to Section 9(1) of the Act, only such part of the income which is reasonably attributable to operations carried out in India" would be taxable. HC further clarified there is also no material on record which would indicate that Nortel India maintained any stocks of goods or merchandise in India from which goods were regularly delivered on behalf of the assessee. Thus, by virtue of Explanation 2 read with Explanation 3 to Section 9(1)(i) of the Act, no part of assessee's income could be brought to tax under the Act.

ONGC vs. Income-tax Officer, International Taxation, 69 taxmann.com 421 [2016] (Delhi - ITAT)

ONGC had made payment to non-resident assessee, for auditing/third party certification of oil reserves. Work was carried out by non-resident assessee at its work place in Dallas, USA. Assessing Officer treated payment as fees for technical services on ground that assessee was not rendering any services relating to construction, assembly, mining or like project as mentioned in exclusion clause of Explanation 2 to Section 9(1) (vii) and, thus, all receipts emanating from contract under consideration were to be taxed in India as a 'FTS'. ONGC had not been enabled to apply technology in future on its own without recourse to assessee and knowledge required to carry out similar work had not been made available to ONGC. Hence, the payment could not be taxed as fees for technical services but under the specific provisions of Section 44BB. ITAT held that the revenues of the assessee should be taxed under the provision of Section 44BB.

SERVICE TAX

(Contributed by CA. A. R. Krishnan & CA. Girish Raman)

Business Auxiliary Services

Where the appellant was awarded contract by National Highways Authority of India ("NHAI") for collection of tolls either under a fixed remuneration contract (i.e., it being paid a fixed amount for collecting tolls) or a toll rights contract (where it bids and acquires toll collection right for specified period for a specified price) the Tribunal held that the amounts received by the appellant would not be liable to service tax under category of Business Auxiliary Services since:

NHAI is a statutory body established under National Highways Authority of India Act, 1988 for development and maintenance and management of highways and by carrying these activities it

is doing a sovereign function of developing and maintaining the highways and not providing any service.

Since NHAI is not involved in any business activity, the services provided by appellant cannot be considered as Business Auxiliary Services as held in *CST vs. Intertoll ICS CE Cons O&M P. Ltd. (2011) 24 STR 611 (Tribunal)*.

[*Ideal Road Builders P. Ltd. vs. CST (2015) 40 S.T.R. 480 (Tri. - Mumbai)*]

Penalty

Where the assessee had paid service tax as recipient of service after issuance of SCN but before the passing of the adjudication order, the Tribunal held that payment of service tax results in a revenue neutral situation since the credit is available to the assessee himself and not anyone else. Hence penalty u/ss. 76, 77 and 78 were set aside [*Jain Irrigation Systems Ltd. vs. CCE (2015) 40 STR 752 (Tri.-Mum.)*].

Limitation

The SCN for recovery of erroneous refund has to be in compliance with Section 73 including the time limit prescribed u/s. 73 [*CCE. vs. Reliance Communications Ltd. (2015) 40 STR 260 (Tri.-Mumbai)*].

The records of the appellant for the period 2003-06 were audited by the service tax department in 2006 during which no short payment was detected. Subsequently in 2008, when a second audit was conducted for the same period the audit team had detected a short payment of service tax. Accordingly, a show cause notice was issued invoking extended period of limitation seeking to recover the said short payment of tax. On appeal the Tribunal held that since no short payment was detected during the first audit conducted by the department, invocation of extended period of limitation for demanding service tax in respect of short payment detected during the second audit was not permissible. [*Trans Engineers India Pvt. Ltd. vs. Commissioner of C. Ex. 2015 (40) S.T.R. 490 (Tri.-Mumbai)*].

Where the assessee disclosed the value of services on which it did not pay service tax as exempted services in the ST-3 returns, the Tribunal held that the charge of suppression of facts is not sustainable merely because they did not give the detailed description of exempted services especially when there is no such legal requirement and accordingly extended period of limitation cannot be invoked [*Cellebrum Technologies Ltd. vs. CCEx (2015) 40 STR 707 (Tri.-Del.)*].

Where the assessee had filed a writ before the High Court contesting the validity of s. 66A which had been admitted and the department was aware about the writ but did not issue any protective demand notices, the appellants can be said to have bonafide belief that service tax was not payable and therefore extended period of limitation could not be invoked [*Inter Jewell Pvt. Ltd. vs. CST (2015) 40 STR 759 (Tri.-Mumbai)*].

Rectification of Mistake

Where the Revenue in a rectification application contended that the order of the Tribunal allowing refund of service tax paid on export of services was erroneous on the face of the record since it did not consider the application of principles of unjust enrichment which was one of the main grounds in its ground of Appeal, the Tribunal held as follows:

- Revenue has not filed any documentary evidence that the assessee has unduly enriched themselves;
- The contention of the Revenue that it had urged the point of unjust enrichment before the Commissioner (Appeals) is not borne out by the records. Therefore, there is no error apparent on the face of record committed by the Tribunal;

- Even on merits, unjust enrichment does not apply in respect of exports;
- Even if grounds have been taken in the Appeal Memo but have not been argued/urged before the Tribunal, there cannot be any mistake which involves any rectification.

In view of the above, the Tribunal dismissed the Rectification of Mistake Application of the Revenue. [*CST vs. Vodafone (India) Ltd. (2015) 40 S.T.R. 699 (Tri. - Mumbai)*].

Appeals

Where the Tribunal had dismissed the appeal filed by the Revenue against the order of the CCE(A) allowing the rebate on services exported out of India on the grounds that in terms of Section 35B of Central Excise Act no appeal can be entertained before the Tribunal against such order, the High Court held that under Finance Act, 1994 an appeal against the order of CCE(A) in the matter of rebate of service tax can be filed before the Tribunal in terms of Section 86(2A) of the Finance Act, 1994 and provision of Section 35B of Central Excise Act would not be applicable in such cases [*CST vs. Ambe International (2015) 40 S.T.R. 441 (Bom.)*].

Adjustment of Tax

The appellant in the present case had paid an excess service tax of ₹ 2.57 lakh in the quarter ended December 2009 and had adjusted the same against its subsequent service tax liabilities for the quarter ended March 2010. The appellant claimed such adjustment has to be covered under Rule 6(1A) of the Service Tax Rules viz., advance payment of service tax. However, the Revenue allowed credit of tax only to the extent of ₹ 1 lakh under Rule 6(4A) of the Service Tax Rules and denied the adjustment under Rule 6(1A) on the grounds that the appellant had not intimated payment of such service tax in advance to the Superintendent within a period of 15 days from such payment of tax. On appeal the Tribunal held that though the appellant had not given any specific intimation to the Superintendent as required under Rule 6(1A) since the appellant had intimated the details of such advance payments and its subsequent adjustment thereof in its ST-3 returns, it had substantially complied with the requirement of Rule 6(1A) and hence it was entitled to claim adjustment of tax under Rule 6(1A) of the Service Tax Rules [*Garima Associates vs. CC&CEX (2015) 40 STR 247 (Tri.-Mumbai)*].

CENVAT Credit

Credit of Service tax paid by recipient of service under reverse charge can be availed on the basis of TR- 6 challan even prior to 16/6/2005, from which date challan can be treated as document for availing CENVAT credit [*CCE vs. MRF (2015) 40 STR 211(Mad.)* see also *CCE vs. Sidhali Steels Pvt. Ltd. (2015) 40 S.T.R. 458 (Uttarakhand)*].

Prior to 1/4/2011 availment of CENVAT credit on construction services used for setting up of factory would be admissible [*CCE. vs. Technico Industries Ltd. (2015) 40 STR 259 (Tri-Del)*].

Denial of CENVAT credit availed on outdoor catering services on the grounds that such credit would be admissible only where the assessee is statutorily obligated to provide canteen services to its employees is incorrect [*Paramount Communications Ltd. vs. CCE (2015) 40 STR 265(Tri.-Del.)*].

CENVAT Credit of Service tax paid on maintenance of windmills used to generate electricity used for manufacture of final products is admissible and cannot be denied on the following grounds –

- That the windmills are located far away from the factory [since there is no stipulation that input services (unlike inputs) must be received in the factory];

- Electricity is not excisable; and
- Electricity generated is transferred to Gujarat Electricity Board, who in turn, is providing electricity to the appellant and raising bills [which are being consumed for manufacture of final dutiable products].

[*Parry Engg. & Electronics P. Ltd. vs. CCE & ST (2015) 40 STR 243 (Tri.- LB)*]

CENVAT credit on freight inward, telecommunication, security, insurance, consultancy and courier admissible being services used in manufacture of excisable goods in the course of business. [*CCE vs. S.K.H. Metals Ltd. (2015) 40 STR 690 (Tri.-Del.)*].

CENVAT credit on construction services used for setting up factory (June 2005 to September 2010) is allowable [*CCE vs. Madhusudan Auto Ltd. (2015) 40 STR 732 (Tri.-Del.)*].

CENVAT credit on pest control services for maintaining records is admissible [*CCE vs. Lucas TVS Ltd. (2015) 40 STR 741 (Tri.-Chennai)*].

Refund

Date of filing the refund claim electronically is to be considered for the purpose of reckoning the period of limitation of one year though documents are submitted subsequently [*The Design Consortium vs. CCE (2015) 40 STR 734 (Tri.-Del.)*].

Natural Justice

Where the Tribunal while passing an order relied on a judgment passed subsequent to the hearing of the case before it, the High Court held that the Tribunal ought to have given an opportunity of hearing to the petitioner before deciding the matter [*Garden Silk Mills Ltd. (PFY Division) vs. Union of India (2015) 40 STR 630 (Guj.)*].

...

Congratulations!



CA. Marzun E. Jokhi

Membership No. 104238, has completed his PhD studies as per UGC Regulations and obtained Doctorate Degree under faculty of Commerce from KSKV University, Bhuj-Kutch.



CA. Girish Deodhar

Membership No. 37101, has been elected as Executive Committee Member of Vidarbha Industries Association, Nagpur in the recently concluded elections and has been appointed as Treasurer for 2016-17.

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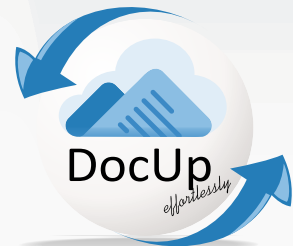
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