# KSCAA NEWS BULLETIN

2014 - 15
Embodiment of Virtues

*Upholding the Moral & Professional Excellence*

**English Monthly**
for Private Circulation only

**Vol. 2 • Issue 8 • ₹ 25/- • April 2015**

ಕಾಯಕವೇ ಕೈಲಾಸ

## One Day Seminar on

## CO-OPERATIVE BANK - INCOME TAX & AUDIT COMPLIANCES

**26th April 2015**, Sunday
at **Bagalkot DCC Bank Auditorium**
Navanagar, **Bagalkot**

# From the President

ಮಾಡುವಂತಿರಬೇಕು ಮಾಡದಂತಿರಬೇಕು!
ಮಾಡುವ ಮಾಟದೊಳಗೆ ತಾನಿಲ್ಲದಿರಬೇಕು!!
ನೋಡುವಂತಿರಬೇಕು, ನೋಡದಂತಿರಬೇಕು!
ನೋಡುವ ನೋಟದೊಳಗೆ ತಾನಿಲ್ಲದಿರಬೇಕು!!
ನಮ್ಮ ಕೂಡಲಸಂಗಮದೇವರ
ನೆನೆವುತ್ತ ನೆನೆವುತ್ತ ನೆನೆಯದಂತಿರಬೇಕು!

– ವಿಶ್ವಗುರು ಬಸವಣ್ಣನವರು

*Dear Professional Colleagues,*

One of our highly respected member, CA. T. V. Mohandas Pai, who has an illustrious professional career, has been awarded Padma Shri this year. On Behalf of KSCAA, I congratulate him from the core of my heart for making the profession proud.

## MUDRA Bank

Prime Minister Narendra Modi on 8th April 2015 launched the MUDRA bank which will provide loans of up to Rs 10 lakh to small entrepreneurs including shopkeepers and beauty parlour owners, hoping that it will promote growth and create jobs. Speaking at the launch of Pradhan Mantri Micro Units Development Refinance Agency (MUDRA) Yojana, Mr. Modi said the aim is to provide financial assistance to the "unfunded" small entrepreneurs who provide employment to a large number of people. The roles envisaged for MUDRA include laying down policy guidelines for micro enterprise financing business and registration of MFI entities as well as their accreditation and rating.

## Karnataka State Budget

Chief Minister Siddaramaiah, who also holds Finance portfolio presented the State budget for 2015-16 on 13th March 2015. Profession Tax exemption limit is increased from Rs.10,000 to Rs.15,000. The basic exemption limit for VAT registration is increased from Rs.7,50,000 to Rs.10,00,000. No Change in VAT rates. Necessary steps to prepare Trade and Industry and department for smooth transition to Goods and Services Tax (GST) System. Looks like Karnataka will be one of the first states to adopt GST.

## KSCAA Programs

KSCAA organised a joint program with KASSIA on the topic Union Budget 2015 and the Karnataka State Budget on 19th March 2015 at KASSIA Bhawan, Vijayanagar, Bengaluru. The seminar was open to public and many entrepreneurs and members from industry actively participated in the event.

KSCAA is organising One Day Seminar on Co-operative Bank-Income Tax & Audit Compliances at Bagalkot on 26th April 2015 jointly with Bagalkot District Central cooperative Bank Ltd, Bagalkot and Shri Basaveshwara Cooperative Bank Ltd , Bagalkot. The seminar is open to public and we welcome you to participate in the event. The details are presented elsewhere in the bulletin.

## Members Grievances

Further, we are planning to take up various issues faced by professionals, with respective government and other departments in the coming months. Request the members to send your professional issues and grievances so that we can collectively take up the matter and work forward to protect our professional interests.

## Basava Jayanthi – Kayakave Kailasa:

Work is natural to man. It is work that adds meaning to life. Without it life is dull, uninteresting and monotonous. Honest labour is also praise and a prayer to God. Great civilisation and culture is always an achievement of great toil and labour.

Man is the crown of creation only because he is skilled and capable of hard work. His mind can guide him to choose the right work and guide it to its logical conclusion. An idle man is generally an unhappy person while an idle mind is the devil's workshop. Nations become great when their manpower is fully and suitably employed. Without work life is not worth living.

On the eve of Basava Jayanthi, I sincerely request all the members to implement the philosophy of worshipping the work what we do in true sense. And work without any care for result. Wish you all Happy Basava Jayanti.

***Action is the duty and reward is not thy concern***

***– Bhagavad Gita***

In service of the Profession,

**CA. Raveendra S. Kore**
President

KSCAA
News Bulletin
April 2015
Vol. 2 Issue 8
No. of Pages : 24

## CONTENTS





KSCAA welcomes articles & views from members for publication in the news bulletin / website.

**email: info@kscaa.co.in**

**Website: www.kscaa.co.in**

**Karnataka State Chartered Accountants Association®**
**Bengaluru**

***Organises***

# One Day Seminar on

# CO-OPERATIVE BANK - INCOME TAX & AUDIT COMPLIANCES

***Jointly With***

**Bagalkot District Central Co-operative Bank Ltd**
**Bagalkot**

**and**

**Shri Basaveshwara Co-operative Bank Ltd**
**Bagalkot**

**Date: 26th April 2015, Sunday**

**Venue : Bagalkot DCC Bank Auditorium,**
**Sector 24, Navanagar, Bagalkot-587102**

**SEMINAR AGENDA**

| | |
|---|---|
| 9:30 AM | Registration |
| 10.00 AM | INAUGURAL SESSION |
| | FIRST TECHNICAL SESSION |
| 11:00 AM | Critical Issues in Income Tax - Co-operative Banks<br>**CA Venkatesh D R**, *Bangalore* |
| 1:15 PM | LUNCH BREAK |
| | SECOND TECHNICAL SESSION |
| 2:15 PM | Disclosure and Presentation Requirements in Financial Statements of Co-operative Banks<br>**CA. Ravindranath B V**, *Sagar* |
| 4:00 PM | TEA BREAK |
| | THIRD TECHNICAL SESSION |
| 4:15 PM | Compliances of Accounting & Auditing Standards relating to Co-operative Banks<br>**CA. Shivakumar H**, *Bangalore* |

*FOR DETAILS CONTACT:*

**CA. Raveendra S. Kore**, *President, KSCAA* - **99020 46884**

**CA. Dileep Kumar T.M.**, *Vice President, KSCAA* - **98453 30800**

**CA. Raghavendra Puranik**, *Secretary, KSCAA* - **96322 45475**

**CA. Kumar S. Jigajinni**, - **94803 11197**
*Seminar Co-ordinator, Bagalkot*

# Corporate Social Responsibility

**CA. S. Krishnaswamy**

**Introduction**

Within the world of business, the main "responsibility" for corporations has historically been to make money and increase shareholder value. In other words, corporate financial responsibility has been the sole bottom line driving force. However, in the last decade, a movement defining broader corporate responsibilities– for the environment, for local communities, for working conditions, and for ethical practices–has gathered momentum and taken hold. Thisnew driving force is known as corporate social responsibility (CSR). CSR is oftentimes also described as the corporate "triple bottom line"–the totality of the corporation's financial, social, and environmental performance in conducting its business.

1. Business Dictionary defines CSR as "A company's sense of responsibility towards the community and environment (both ecological and social) in which it operates. Companies express this citizenship (1) through their waste and pollution reduction processes, (2) by contributing educational and social programs and (3) by earning adequate returns on the employed resources."
2. In 2014, India became the world's first country to enact a mandatory minimum CSR spending law. Under Companies Act, 2013, any company having a net worth of 500 crore or more or a turnover of 1000 crore or a net profit of 5 crore must spend 2% of their net profits on CSR activities. The rules came into effect from 1 April 2014. It is estimated that the section will cover about 6000 companies and rake in about Rs. 20,000 crores.

**3. Background**

**The UN Millennium Development Goals**

**1) Eradicate extreme poverty and hunger**

Where do we stand?

1.2 billion still live in extreme poverty, even though poverty rates have been halved between 1990 and 2010 and MDG target has been met.

**2) Achieve universal primary education**

Where do we stand?

Despite impressive strides forward at the start of the decade, progress in reducing the number of children out of school has slackened considerably.

**3) Promote gender equality and empower women**

Where do we stand?

Women are assuming more power in the world's parliaments, boosted by quota systems.

**4) Reduce child mortality**

Where do we stand?

Despite substantial progress, the world is still falling short of the MDG child mortality target.

**5) Improve maternal health**

Where do we stand?

Much more still needs to be done reduce maternal mortality.

**6) Combat HIV/AIDS, malaria and other diseases**

Where do we stand?

There are still too many new cases of HIV infection.

**7) Ensure environmental sustainability**

Where do we stand?

Millions of hectares of forest are lost every year, threatening this valuable asset. Global greenhouse gas emissions continue their upward trend.

**8) A global partnership for development**

Where do we stand?

Official development assistance is now at its highest level, reversing the decline of the previous two years.

**Earlier Developments:**

4. **The Ministry of Corporate Affairs**

The Ministry of Corporate Affairs released Voluntary Guidelines on CSR in 2009 as the first step towards mainstreaming the concept of Business Responsibilities. Keeping in view the feedback from stakeholders, it was decided to revise the same with a more comprehensive set of guidelines that encompasses social, environmental and economical responsibilities of business. In July 2011, the Ministry released National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business.

The Guidelines emphasize that businesses have to endeavor to become responsible actors in society, so that their every action leads to sustainable growth and economic development. Accordingly, the Guidelines use the terms 'Responsible

Business' instead of Corporate Social Responsibility (CSR) as the term 'Responsible Business' encompasses the limited scope and understanding of the term CSR.

In the Preface it is stated - The Guidelines take into account the learnings from various international and national good practices, norms and frameworks, and provide a distinctively 'Indian' approach, which will enable businesses to balance and work through the many unique requirements of our land. By virtue of these Guidelines being derived out of the unique challenges of the Indian economy and the Indian nation, they take cognizance of the fact that all agencies need to collaborate together, to ensure that businesses flourish, even as they contribute to the wholesome and inclusive development of the country.

The Guidelines emphasize that **responsible businesses alone will be able to help India meet its ambitious goal of inclusive and sustainable all round development, while becoming a powerful global economy by 2020.**

5. **SEBI – Business Responsibility Report**

In 2012, the Securities and Exchange Board of India (SEBI) made Business Responsibility Report a mandatory listing requirement (as part of the Annual Report) for the top 100 listed entities in India. Extract from SEBI Circular of August 13, 2012 introducing "Business Responsibility Reports"

a. At a time and age when enterprises are increasingly seen as critical components of the social system, they are accountable not merely to their shareholders from a revenue and profitability perspective but also to the larger society which is also its stakeholder. Hence, adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance. This is all the more relevant for listed entities which, considering the fact that they have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive continuous disclosures on a regular basis.

b. In line with the above Guidelines and considering the larger interest of public disclosure regarding steps taken by listed entities from a Environmental, Social andGovernance ("ESG") perspective, it has been decided to **mandate** inclusion of Business Responsibility Reports ("BR reports") as part of the Annual Reports for listed entities. Therefore, in line with the objective to enhance the quality of disclosures made by listed entities, certain listing conditions are hereby specified by way of inserting Clause 55 in the equity Listing Agreement as given in Annexure-1.

The business responsibilities report prescribed by SEBI – the template:

1) General Information about the Company

a. Corporate Identity Number (CIN) of the Company

b. Name of the Company

c. Registered address

d. Website

e. E-mail id

f. Financial year reported

g. Sector(s) that the Company is engaged in (industrial activity code-wise)

h. List three key products/services that the Company manufactures/provides (as in balance sheet)

i. Total number of locations where business activity is undertaken by the Company

i. Number of International Locations (provide details of major 5)

ii. Number of National Locations

j. Markets served by the Company – Local/State/National/ International

2) Financial Details of the Company

a. Paid up Capital (INR)

b. Total turnover (INR)

c. Total profit after taxes (INR)

d. Total Spending on Corporate Social Responsibility (CSR) as percentage of profit after tax (%)

e. List of activities in which expenditure in (d) above has been incurred:-

i.

ii.

iii.

3) Other details

4) BR Information

a. Details of Director/Directors responsible for BR

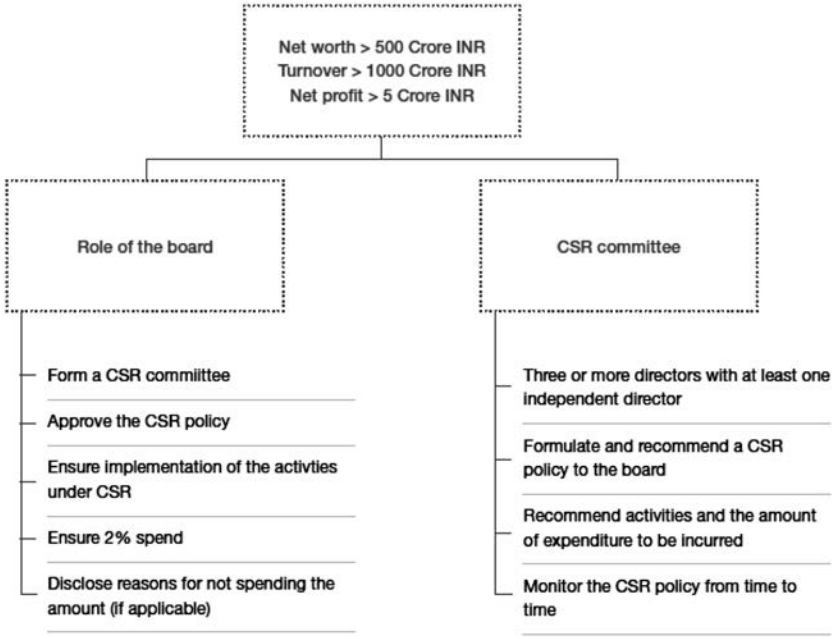
b. Principle-wise (as per NVGs) BR Policy/Policies

5) Principle-wise performance

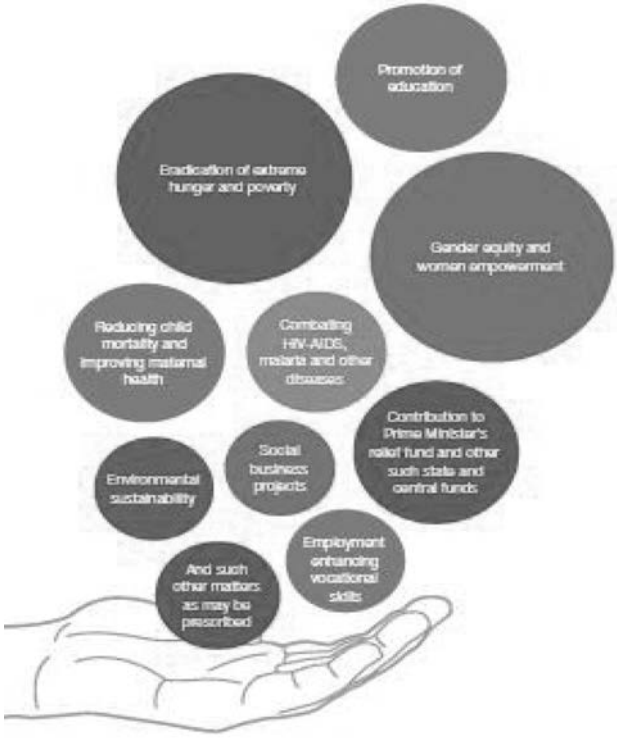
The Business Responsibility report contained the 10 principles laid down in the voluntary guidelines on CSR. Thus a company produced two reports – (1) Sustainability report and (2) Business responsibility report. Now the present section 135 in the Companies Act, 2013 requires as part of Directors' report a policy statement on Corporate Social responsibility indicating the policy read with Sec VII and Rules."

6. **Companies Act, 2013 and Company Rules, 2014**

**6.1 Role of the Board and the CSR Committee**




**6.2List of activities under Schedule VII**




These initiatives bring to the fore an integrated approach – called the triple bottom-line approach – Profit-People-Planet; Economic, ecological and social – covered in Global Reporting Standards (GRI) which has been adopted in the preparation of Business Responsibility Report. We will now define the keywords –

6.3 **CSR Rules provide the following:**

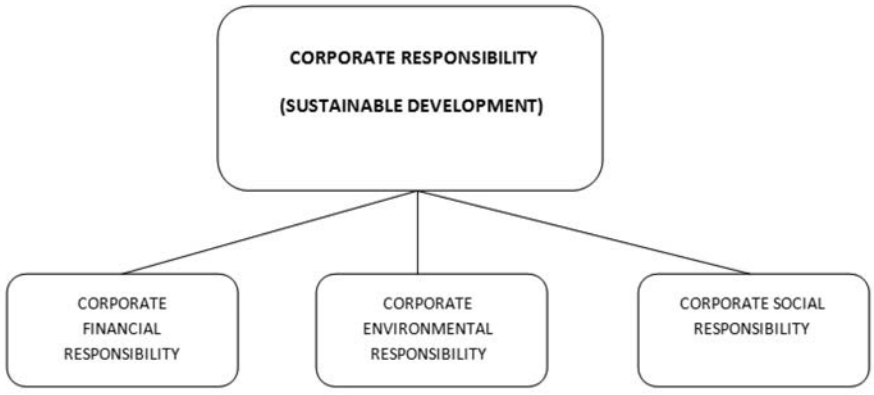
- 'Net Profit' for the section 135 and these rules shall mean, net profit before tax as per books of accounts and shall not include profits arising from branches outside India
- Reporting will be done on an annual basis commencing from FY 2014-15
- CSR activities may generally be conducted as projects or programmes (either new or ongoing)excluding activities undertaken in pursuance of the normal course of business of a company
- The CSR Committee shall prepare the CSR Policy of the company which shall include the following:
  - specify the projects and programmes to be undertaken
  - prepare a list of CSR projects/ programmes which a company plans to undertake during the implementation year, specifying modalities of execution in the areas/sectors chosen and implementation schedules for the same
  - CSR projects/programmes of a company may also focus on integrating business models with social and environmental priorities and processes in order to create shared value
  - surplus arising out of the CSR activity will not be part of business profits of a company
  - would specify that the corpus would include 2 percent of the average net profits, any income arising there-from, and surplus arising out of CSR activities
- Where a company has been set up with a charitable objective or is a Trust/Society/Foundation/any other form of entity operating within India to facilitate implementation of its CSR activities, the following shall apply:
  - contributing company would need to specify the projects/ programs to be undertaken by such an organisation, for utilizing funds provided by it;
  - contributing company shall establish a monitoring mechanism to ensure that the allocation is spent for the intended purpose only
- A company may also implement its CSR programs through not-for-profit organisations that are not set up by the company itself. Such spends may be included as part of its prescribed CSR spend only if such organisations have an established track record of at least three years in carrying out activities in related areas
- Companies may collaborate or pool resources with other companies to undertake CSR activities.

- Only such CSR activities will be taken into consideration as are undertaken within India
- Only activities which are not exclusively for the benefit of employees of the company or their family members shall be considered as CSR activity
- Companies shall report, in the prescribed format, the details of their CSR initiatives in the Directors' Report and in the company's website

**Format for the Annual Report on CSR Activities to be included in the Board's Report**

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition ofthe CSR Committee
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two per cent. Ofthe amount as in item 3 above)
5. Details of CSR spent during the financial year.
   a. Total amount to be spent for the financial year
   b. Amount unspent , if any;
   c. Manner in which the amountspent during the financial year isdetailed below.

7. **Relation between CSR & Sustainable Development :**




**What is Sustainability?**

Sometimes used interchangeably with the term corporate social responsibility, the most widely accepted definition of sustainability that has emerged over time is the "triple bottom-line" consideration of (1) economic viability, (2) social responsibility, and (3) environmental responsibility.

While environmental considerations are often the focus of attention, the triple-bottom-line definition of sustainability is a broad concept. In addition to preservation of the physical environment and stewardship of natural resources, sustainability considers the economic and social context of doing business and also encompasses the business systems, models and behaviors necessary for long-term value creation.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| S. No | CSR project or activity identified | Sector in which the Project is covered | Projects or programs (1)Local area or other (2) Specify the state and district where projects or programs was undertaken | Amount outlay (budget) project or programs wise | Amount spent on the projects or programs Sub-heads: (1)Direct expenditure on projects or programs (2) Overheads | Cumulative expenditure upto to the reporting period | Amount spent: Direct or through implementing agency |
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |
| | TOTAL | | | | | | |

*Give details of implementing agency:

6. In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR policy, is in compliance with CSR objectives and Policy of the company.

8. **Global - GRI and Sustainability Reporting**

8.1 **GRI**

The Global Reporting Initiative (GRI) is an international not-for-profit organization, with a network-based structure; and a Collaborating Centre of the United Nations Environment Programme.

Since 1999, GRI has provided a comprehensive Sustainability Reporting Framework that is widely used around the world. The

cornerstone of the Framework is the Sustainability Reporting Guidelines.

As a result of the credibility, consistency and comparability it offers, GRI's Framework has become a de facto standard in sustainability reporting.

8.2 **Multi-stakeholder input.** GRI's approach is based on multi-stakeholder engagement; this is considered the best way to produce universally-applicable reporting guidance that meets the needs of all report makers and users. All elements of the Reporting Framework are created and improved using a consensus-seeking approach, and considering the widest possible range of stakeholder interests. Stakeholder input to the Framework comes from business, civil society, labor, accounting, investors, academics, governments and sustainability reporting practitioners.

8.3 **A record of use and endorsement**. Every year, an increasing number of reporting organizations adopt GRI's Guidelines. From 2006 to 2011, the yearly increase in uptake ranged from 22 to 58 percent. New audiences for sustainability information, like investors and regulators, are now calling for more and better performance data. Annual growth in the number of reporters is expected to continue, as GRI works for more reporters and better reporting.

8.4 **Governmental references and activities.** GRI was referenced in the Plan of Implementation of the UN World Summit on Sustainable Development in 2002. Use of GRI's Framework was endorsed for all participating governments. Several governments consider GRI's Framework to be an important part of their sustainable development policy, including Norway, the Netherlands, Sweden and Germany.

8.5 **Who Participates in GRI?**

GRI works within a global network that is open to all individuals and organizations with an interest in sustainability reporting. This collaborative network includes representation from corporations, governments, non-governmental organizations, consultancies, accountancy organizations, business associations, rating agencies, universities, and research institutes. They contribute to the ongoing development of GRI's Sustainability Reporting Framework.

8.6 **GRI Focal Point in India**

Leading companies voluntarily adopted reporting on National Voluntary Guidelines calling it "Sustainability report" and those governed by SEBI issuing another report called 'Business Responsibilities report.' These reporting requirements shall stand even after inserting Sec 135 of the Companies Act and the reports requirement which it prescribes in the rules.

9. **Income-tax Act**

The Income-tax Act has amended Sec 137 to exclude CSR expenditure as a deductible expenditure on the ground that it is an appropriation and hence not a deductible expense. See Explanation 2 w.e.f 01-04-2013 –

"For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."

10. **Alignment with ISO 26000**

The GRI Guidelines can be used in conjunction with ISO 26000 dealing with stakeholders inclusiveness and materiality – (See GRI publication – how to use the GRI Guidelines in conjunction with ISO 26000).

11. **Reserve Bank of India**

The Reserve Bank of India had drawn the attention of banks to their role in Corporate Social Responsibility, Sustainable Development and Non Financial Reporting in its circular dated December 2007.

12. **Public Sector Undertakings (PSUs)**

Responsibility Guidelines for Central Public Sector Undertakings (CPSEs) are a part of the each CPSEs yearly target with their commitment to implement them along with their financial and business targets.

13. **Illustration drawn from Corporate Reports**

**Illustration – 1**

**ITC – Annual Report 2013-14, Annexure III**

The report titled "Alignment to National Voluntary Guidelines (NVG) on Social, Environmental and Economic Responsibilities of Business" dealt with the nine principles in the guidelines. These are –

1. Businesses should conduct and govern themselves with Ethics, Transparency, and Accountability.
2. Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.
3. Businesses should promote the wellbeing of all the employees.
4. Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.
5. Businesses should respect and promote human rights.
6. Business should respect, protect, and make efforts to restore the environment.
7. Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.
8. Businesses should support inclusive growth and equitable development.
9. Businesses should engage with and provide value to their customers and consumers in a responsible manner.

| NVG Principle | Section in BR Report |
|---|---|
| 1 Business should conduct and govern themselves with Ethics, Transparency and Accountability | Corporate Governance for Ethics, Transparency and Accountability |
| 2 Business should provide goods and services that are safe and contribute to sustainability throughout their life-cycle | Sustainability of Products and Services across Life-Cycle |
| 3 Businesses should promote the well-being of all employees | Well-being of Employees |
| 4 Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalised | Stakeholder Engagement |
| 5 Businesses should respect and promote human rights | Human Rights |
| 6 Business should respect, protect, and make efforts to restore the environment | Protection and Restoration of the Environment |
| 7 Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner | Responsible Advocacy |
| 8 Business should support inclusive growth and equitable development | Supporting Inclusive Growth and Equitable Development |
| 9 Businesses should engage with and provide value to their customers in a responsible manner | Providing Value to Customers and Consumers |

**Illustration – 2**

**Corporate Social Responsibility (CSR), IBM India**

"A contingent of nine IBM-ers from nine different countries is descending on Barmer, Rajasthan, for an agri-development project that aims to increase the yields of pomegranate and other fruits that grow in this arid, oil-rich district. The team is a part of IBM's Corporate Service Corps (CSC) initiative, which sends middle management executives to the far corners of the world to lend their skills to social development programs. The nine in Barmer -from the USA, UK, Philippines, Australia, Canada, Hungary, Brazil, Argentina, Israel -have been preparing for months, but a little administrative hand-holding helps in the initial stages. One of Sharma's jobs is to set the ball rolling by introducing her team to the people from Bharatiya Agro Industries Foundation and TechnoServe, the two NGOs they will be working with. In the course of the next four weeks, she hopes everyone would have gained something from the project. "Our people benefit as much as the NGO, by working in a multi-cultural team in a place they have never been before. IBM gains in terms of leadership development and the NGO benefits from the knowledge and experience IBM brings," saysMamtha Sharma, country head for CSR, IBM India.

Started in 2008, the CSC program sends some of IBM's most promising executives to work pro bono on social sector projects in Asia, Africa and Latin America. In India, IBM-ers from around the world have worked with organisations like SEWA in Ahmedabad, Kalamandir in Jamshedpur and the Chennai Municipal Corporation, offering skills in technology, strategy formulation, project management and marketing.Executives from IBM India, for their part, have been sent to Latin America and Africa to gain experience in a different milieu.Such is the prestige of the program that IBM receives ten times the number of applications it needs. "Last year we received 5,000 applications globally for 500 positions. The CSC gains in reputation every year as returnees narrate their experiences and recommend it to others," says Sharma.

The IBM CSC is now being emulated by corporates the world over, such as SAP in Germany, which launched its own version, called the Social Sabbatical Program (SSP) in 2012. In the first year, SAP received 80 applications for 30 postings in three countries. Last year, it received 320 applications for 70 postings in five countries."The experiential learning that the SSP pro vides is critical to building next-gen business leaders, who need to know how to operate across regions and cultures," says SAP's global CSR head Alexandra van der Ploeg."Besides, it addresses the millenium generation's desire to use their skills for a greater good. It provides a sense of purpose."

**Executive Summary**

The Companies Act, 2013 introduced for the first time a requirement on Corporate Social Responsibility for companies having a turnover of Rs. 1000 crore, net worth of Rs. 500 crore and net profit of Rs. 5 crore. This is mandatory in "an apply or explain" principle. Earlier SEBI had mandated 100 top listed companies to issue what is called "Business Responsibility Report" carrying the CSR principle. This is mandatory. This was the off shoot of National Voluntary Guidelines (NVG) issued by MCA in 2012 – National Voluntary Guidelines on Social, Economic and Environmental Responsibilities (revised NVG of 2009) which many companies adopted as 'Sustainability Development Programme'. NVG is inspired by 'The Global Reporting Initiatives', an NGO backed by International agencies. The idea of CSR is not just philanthropy but a strategic philosophy aligned to a Company's Business Policy, see Illustration (2) on IBM on CSR. The Companies Act, 2013 is followed by CSR Rules 2014. Companies shall as part of Directors' Report spell out the CSR Policy. The spending must be 2% of average 3 years profits and the areas are also mentioned. Income-tax act is amended not to allow CSR expenditure as a deductible item.

Source: Handbook on Corporate Social Responsibility in India – PWC

*Author can be reached on e-mail: skcoca2011@yahoo.in*

# ತೆರಿಗೆ ಮತ್ತು ಹಣಕಾಸು ತಜ್ಞ ಶ್ರೀ ಬಸವೇಶ್ವರ

ಸಿ.ಎ. ಹೆಚ್. ಶಿವಕುಮಾರ

**ಧರಣಿಯ ಮೇಲೊಂದು ಹಿರಿದಪ್ಪ ಅಂಗಡಿಯನಿಕ್ಕಿ**
**ರಹದ ಕುಳ್ಳಿರ್ದ ನಮ್ಮ ಮಹದೇವಶೆಟ್ಟಿ**
**ಒಮ್ಮನವಾದರೆ ಒಡನೆ ನುಡಿವನು**
**ಇಮ್ಮನವಾದರೆ ನುಡಿಯನು**
**ಕಾಣಿಯ ಸೋಲ, ಅಡ್ಡಗಾಣಿಯ ಗೆಲ್ಲ**
**ಜಾಣ ನೋಡವ್ವ, ನಮ್ಮ ಕೂಡಲಸಂಗಮದೇವ**

ಈ ಭೂಮಿಯ ಮೇಲೆ ಒಂದು ದೊಡ್ಡದಾದ ಅಂಗಡಿಯನ್ನು ತೆರೆದು ವ್ಯಾಪಾರಕ್ಕೆಂದು ಮಹದೇವಶೆಟ್ಟಿ ಎಂಬ ವರ್ತಕ ಕುಳಿತಿದ್ದಾನೆ. ಅಂಗಡಿಗೆ ಬರುವ ಗ್ರಾಹಕರೊಡನೆ ವ್ಯಾಪಾರದ ದರ, ರೀತಿನೀತಿಗಳು ಕುದುರಿದರೆ ಕೂಡಲೇ ಮಾತನಾಡಿ ವ್ಯಾಪಾರ ಮುಗಿಸುತ್ತಾನೆ. ಇಲ್ಲದಿದ್ದರೆ ವ್ಯಾಪಾರ ಮಾಡುವುದಿಲ್ಲ. ಆತ ಒಂದು ರೂಪಾಯಿಯನ್ನು ಬಿಟ್ಟುಕೊಡುವವನಲ್ಲ. ಮತ್ತು ಅಡ್ಡಮಾರ್ಗದಲ್ಲಿ ಒಂದು ರೂಪಾಯಿಯನ್ನು ಹೆಚ್ಚು ಪಡೆಯುವುದಿಲ್ಲ. ಮಹದೇವಶೆಟ್ಟಿ ವಿವೇಕವುಳ್ಳ ವರ್ತಕ. ಹೀಗೆ ವಾಣಿಜ್ಯ ವ್ಯವಹಾರದ ಚಿತ್ರಣ ಕೊಟ್ಟು ಅಧ್ಯಾತ್ಮದ ಅರ್ಥವನ್ನು ನಿರೂಪಿಸಿರುವ ಸಂತಕವಿ ಬಸವಣ್ಣ ಹನ್ನೆರಡನೆಯ ಶತಮಾನದಲ್ಲಿ ಈಗಿನ ಉತ್ತರ ಕರ್ನಾಟಕದ ಭಾಗದಲ್ಲಿ ಬದುಕಿದ್ದ ಮಹಾವ್ಯಕ್ತಿ. ವಚನರಚನೆಯ ಮೂಲಕ ಕವಿಯಾಗಿ, ಪ್ರಗತಿಪರ ಚಿಂತನೆಗಳ ಮೂಲಕ ದಾರ್ಶನಿಕನಾಗಿ, ಕಾಯಕವೇ ಕೈಲಾಸ ಎಂದು ಹೇಳುತ್ತಾ ಸಮಾಜ ಸುಧಾಕರನಾಗಿ, ಬಿಜ್ಜಳರಾಜನ ಆಸ್ಥಾನದಲ್ಲಿ ಅರ್ಥಮಂತ್ರಿಯಾಗಿದ್ದ ಬಸವಣ್ಣನದು ಬಹುಮುಖ ವ್ಯಕ್ತಿತ್ವ. ರಾಜನ ಆಸ್ಥಾನದಲ್ಲಿ ಕರಣಿಕನಾಗಿ ಅಂದರೆ ಲೆಕ್ಕಪತ್ರಗಳನ್ನು ನಿರ್ವಹಿಸುವ ಕೆಲಸ ಮಾಡುತ್ತಾ ತನ್ನ ವೃತ್ತಿ ಜೀವನವನ್ನು ಆರಂಭಿಸಿದ ಬಸವಣ್ಣ ಮುಂದೆ ಅದೇ ರಾಜ್ಯದ ಹಣಕಾಸು ಮಂತ್ರಿಯಾಗಿ, ಪ್ರಧಾನ ಮಂತ್ರಿಯಾಗಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸಿದ ಇತಿಹಾಸ ಬಸವಣ್ಣನ ಬಗ್ಗೆ ಕುತೂಹಲ, ಆಸಕ್ತಿ, ಗೌರವವನ್ನು ಹುಟ್ಟಿಸುವಂತಹುದು. ಇಂದು ಕಂಪನಿಗಳ ಲೆಕ್ಕನಿರ್ವಹಣೆಯ ಜವಾಬ್ದಾರಿ ಹೊತ್ತು ವೃತ್ತಿ ಆರಂಭಿಸುವ ಸಿ.ಎ. ಮುಂದೆ ಮುಖ್ಯ ಹಣಕಾಸು ಅಧಿಕಾರಿಯಾಗಿ ನಂತರ ಕಂಪನಿಯ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಹಣಾಧಿಕಾರಿಯಾಗುವ ಬಗೆಯಲ್ಲಿ ಬಸವಣ್ಣನ ಜೀವನ ಚರಿತ್ರೆಯ ಛಾಯೆಯನ್ನು ಗಮನಿಸಬಹುದು. ಆದ್ದರಿಂದ ಈ ದೃಷ್ಟಿಯಲ್ಲಿ ಬಸವಣ್ಣನನ್ನು ನೋಡುವುದು ಸಿ.ಎ. ಸಮುದಾಯಕ್ಕೆ ಸೇರಿದ ನಮ್ಮೆಲ್ಲರಿಗೆ ಹೆಚ್ಚು ಅರ್ಥಪೂರ್ಣವಾಗುತ್ತದೆ.

ಅಂಕಿ ಸಂಖ್ಯೆಗಳು ಮತ್ತು ಗಣಿತದಲ್ಲಿ ನಿಸ್ಸೀಮನಾಗಿದ್ದ ಬಸವಣ್ಣ ಬಿಜ್ಜಳನ ರಾಜ್ಯದಲ್ಲಿ ಹಣಕಾಸು ಮಂತ್ರಿಯಾಗಿ, ಪ್ರಧಾನ ಮಂತ್ರಿಯಾಗಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ಹತ್ತು ಲಕ್ಷ ಪ್ರಜಾವರ್ಗ, ಒಂದು ಲಕ್ಷ ಐವತ್ತು ಸಾವಿರ ಸಂಖ್ಯೆಯ ಸ್ಥಿರ ಸೈನ್ಯ, ಹನ್ನೆರಡು ಸಾವಿರ ರಥಗಳು, ಏಳುನೂರು ಆನೆಗಳು, ಮತ್ತು ಹತ್ತು ಕೋಟೆ ಕೊತ್ತಲಗಳ ಸಾಮ್ರಾಜ್ಯವನ್ನು ಅತ್ಯಂತ ಯಶಸ್ವಿಯಾಗಿ ನಿರ್ವಹಿಸಿದ್ದ ಬಗ್ಗೆ ಪುರಾಣದಲ್ಲಿ ಉಲ್ಲೇಖಗಳು ಸಿಗುತ್ತವೆ. ಸಾರ್ವಜನಿಕ ಆಡಳಿತದಲ್ಲಿ ದಕ್ಷತೆ ಮತ್ತು ಪ್ರಮಾಣಿಕತೆಗೆ ಒತ್ತು ನೀಡಿದ್ದ ಬಸವಣ್ಣ ರಾಜಕೀಯ ವಿರೋಧಿಗಳನ್ನು ತನ್ನ ನೈತಿಕ ಬಲದಿಂದಲೇ ನಿಗ್ರಹಿಸುತ್ತಿದ್ದ ಬಗ್ಗೆ ಕಥೆಗಳಿವೆ.

ತನ್ನ ಆರ್ಥಿಕ ನಿಪುಣತೆ ಮತ್ತು ಲೆಕ್ಕಜ್ಞಾನದಿಂದ ರಾಜ ಬಿಜ್ಜಳನ ಸಂಪೂರ್ಣ ವಿಶ್ವಾಸವನ್ನು ಗಳಿಸಿದ್ದ ಬಸವಣ್ಣ ರಾಜ್ಯದ ಆರ್ಥಿಕ ಸುಭದ್ರತೆಯನ್ನು ಸಾಧಿಸಲು ಹದಿಮೂರು ತರಹದ ತೆರಿಗೆಗಳನ್ನು ಜಾರಿಗೆ ತಂದಿದ್ದನೆಂದು ಇತಿಹಾಸ ಹೇಳುತ್ತದೆ. ಕಪ್ಪಕಾಣಿಕೆ ರೂಪದ ಸಿದ್ಧಾದಾಯ, ಬಿಟ್ಟಕೊಟ್ಟಣ ಎಂಬ ದೇಣಿಗೆ, ಅಂಕೆಯ ಸೊಲ್ಲಿಗೆ ಎಂಬ ಹೆಸರಿನ ದೇಣಿಗೆ, ಅಪುತ್ರಿಕೆ ಎಂಬ ಸಂತಾನವಿಲ್ಲದವರ ಸ್ವತ್ತಿನ ಮೇಲಿನ ತೆರಿಗೆ, ಉಂಡಿಗೆ ಎಂಬ ವಿಲಾಸಿ ವಸ್ತುಗಳ ಮೇಲಿನ ತೆರಿಗೆ, ಅಮದು ರಫ್ತುಗಳ ಮೇಲಿನ ಸೀಮಾ ಸುಂಕ, ಗುತ್ತಿಗೆ ಎಂಬ ಭೂರಾಜಧನ ಹೀಗೆ ಹಲವು ತೆರಿಗೆಗಳ ಮೂಲಕ ರಾಜ್ಯಾದಾಯವನ್ನು ನಿರ್ವಹಿಸುತ್ತಿದ್ದನೆಂದು ಪುರಾಣಕಾರರು ಹೇಳುತ್ತಾರೆ. ಪ್ರಜೆಗಳು ತೆರಿಗೆ ಪಾವತಿ ಮಾಡುವುದರ ಬಗ್ಗೆ ವಿಶೇಷ ಕಾಳಜಿ ವಹಿಸುತ್ತಿದ್ದ ಬಸವಣ್ಣ ತೆರಿಗೆ ಮತ್ತು ಕಪ್ಪುಹಣದ ಬಗ್ಗೆ ತನ್ನ ವಚನವೊಂದರಲ್ಲಿ ಹೀಗೆ ಹೇಳುತ್ತಾನೆ "ಭಂಡಾರ ತುಂಬಿದ ಬಳಿಕ ಸುಂಕವ ತೆತ್ತಲ್ಲದೆ ಹೋಗಲಾರದು. ಕಳ್ಳನಾಣ್ಯ ಸಲುಗೆಗೆ ಸಲ್ಲದು, ಕಳ್ಳನಾಣ್ಯವ ಸಲಲೀಯರಯ್ಯ".

ತೆರಿಗೆ ಪದ್ಧತಿ, ರಾಜ್ಯ ಭಂಡಾರ ನಿರ್ವಹಣೆಯಲ್ಲಿ ತನ್ನದೇ ಆದ ಆರ್ಥಿಕ ಸಿದ್ಧಾಂತಗಳನ್ನು ರೂಪಿಸುತ್ತಿದ್ದ ಬಸವಣ್ಣ ಹಣಕಾಸು ವಹಿವಾಟುಗಳಲ್ಲಿ ಬಡ್ಡಿ ವಿಧಿಸುವುದನ್ನು ವಿರೋಧಿಸುತ್ತಿದ್ದ ಬಗ್ಗೆ ಪುರಾವೆಗಳಿವೆ. ರಾಜ್ಯದಲ್ಲಿನ ಹಣ ಚಲಾವಣೆಯಲ್ಲಿ ಚಿನ್ನ ಬೆಳ್ಳಿಯ ನಾಣ್ಯಗಳನ್ನು ಟಂಕಿಸುವ ವ್ಯವಸ್ಥೆ ಮಾಡಿದ್ದ ಬಸವಣ್ಣನ ಕಾಲದಲ್ಲಿ "ಬಸವ ಮುದ್ರಾ ವರಹ" ಎಂಬ ಬೆಲೆಬಾಳುವ ನಾಣ್ಯವೊಂದು ಬಳಕೆಯಲ್ಲಿತ್ತೆಂದು ಪ್ರತೀತಿಯಿದೆ. ಇದಕ್ಕೆ ಪೂರಕವಾಗಿ ಎಂಬಂತೆ ಕೇಂದ್ರ ಸರ್ಕಾರ ಈಗ್ಗೆ ಸುಮಾರು ಹತ್ತು ವರ್ಷಗಳ ಹಿಂದೆ ಬಸವಣ್ಣನ ಚಿತ್ರವಿರುವ ಐದು ರೂಪಾಯಿ ಮುಖಬೆಲೆಯ ನಾಣ್ಯವೊಂದನ್ನು ಟಂಕಿಸಿ ಚಲಾವಣೆಗೆ ಬಿಡುಗಡೆ ಮಾಡಿ ಬಸವಣ್ಣನನ್ನು ಗೌರವಿಸಿದೆ.

ಬಸವರಾಜ, ಬಸವದೇವ, ಬಸವೇಶ್ವರ ಎಂಬ ಧೀಮಂತ ಹೆಸರುಗಳಿಂದ ರಾಜಪ್ರಭುತ್ವದಲ್ಲಿ ರಾರಾಜಿಸುತ್ತಿದ್ದ ಜೊತೆಯಲ್ಲೇ ಪ್ರಭುತ್ವದ ಜನವಿರೋಧಿ ಧೋರಣೆ ಮತ್ತು ಸಿದ್ಧಸಂಪ್ರದಾಯಗಳನ್ನು ಖಂಡಿಸುತ್ತಾ ಜನಪರವಾಗಿ ಕೆಲಸ ಮಾಡಿದ್ದರಿಂದಲೇ ಜನಮಾನಸದಲ್ಲಿ ಅತ್ಯಂತ ಆಪ್ತನಾಗಿ ಬಸವಣ್ಣ ಎಂಬ ಹೆಸರಿನಿಂದ ಚಿರಸ್ಥಾಯಿಯಾಗಿರುವುದು ವ್ಯಕ್ತಿ ವೈಶಿಷ್ಟ. ಕಾಯಕವೇ ಕೈಲಾಸ ಎಂದು ಹೇಳುವ ಮೂಲಕ ಶ್ರಮವನ್ನು ಆಧರಿಸಿದ ಆರ್ಥಿಕ ಮತ್ತು ಸಾಮಾಜಿಕ ಸಿದ್ಧಾಂತವನ್ನು ಪ್ರತಿಪಾದಿಸಿದ ಬಸವಣ್ಣ ಮನುಷ್ಯನ ಜೀವನದಲ್ಲಿ ದುಡಿಮೆಗೆ ಇರುವ ಮಹತ್ವವನ್ನು ಜನರಿಗೆ ಮನಗಾಣಿಸಿ ಜಾತಿಭೇಧ, ಬಡವ ಸಿರಿವಂತರಿಲ್ಲದ ಸಮಾನತೆಯ ಸಮಾಜದ ರಚನೆಯ ಕನಸು ಕಂಡವನು. ಹನ್ನೆರಡನೆಯ ಶತಮಾನದ ಬಸವಣ್ಣನ ಚಿಂತನೆಗಳು ಕಳೆದ ಶತಮಾನದ ಕಾರ್ಲ್‌ಮಾರ್ಕ್ಸ್ ಚಿಂತನೆಗಳಿಗೆ ತೀರ ಹತ್ತಿರವಾಗಿದ್ದವು ಎಂಬುದು ಅಧ್ಯಯನದಿಂದ ಕಂಡು ಬಂದಿರುವ ಕುತೂಹಲಕರ ಅಂಶ.

ಇಂತಹ ಅಪರೂಪದ ವ್ಯಕ್ತಿತ್ವದ ಬಸವಣ್ಣನನ್ನು ಹೆಚ್ಚು ಹೆಚ್ಚು ಅರಿಯಬೇಕಾದರೆ ಆತನು "ಕೂಡಲಸಂಗಮದೇವ" ಎಂಬ ಅಂಕಿತದಲ್ಲಿ ಬರೆದಿರುವ ವಚನಗಳನ್ನು ಗಮನಿಸಬೇಕಾಗುತ್ತದೆ. ಬಸವಣ್ಣನ ಜೀವನ, ದರ್ಶನ, ಚಿಂತನೆ, ಆಶಯ ಎಲ್ಲವನ್ನು ಆತನು ಸರಳ ಕನ್ನಡದಲ್ಲಿ ಬರೆದಿರುವ ವಚನಗಳಲ್ಲಿ ಕಾಣಬಹುದು. ಮಹಾಮಾನವತಾವಾದಿಯಾಗಿದ್ದ ಬಸವಣ್ಣನನ್ನು ಗೌರವಿಸಿ ಪಾರ್ಲಿಮೆಂಟಿನಲ್ಲಿ ಪ್ರತಿಮೆಯೊಂದನ್ನು ಸ್ಥಾಪಿಸಲಾಗಿದ್ದು, **ಪ್ರತಿವರ್ಷ ಕರ್ನಾಟಕ ಸರ್ಕಾರ ಬಸವಣ್ಣನ ಜನ್ಮ ದಿನದಂದು ಗೌರವಾರ್ಥವಾಗಿ ರಜಾ ಘೋಷಿಸುತ್ತಿದ್ದು, ಈ ಬಾರಿ ಬಸವಜಯಂತಿ ಏಪ್ರಿಲ್ 21 ರಂದು ಆಚರಿಸಲ್ಪಡುತ್ತಿದೆ.** "ಸ್ಥಾವರಕ್ಕಳಿವುಂಟು, ಜಂಗಮಕ್ಕಳಿವಿಲ್ಲ" ಎಂದ ಬಸವಣ್ಣನದು ಅಳಿವಿಲ್ಲದ ವ್ಯಕ್ತಿತ್ವ. ಅದು ಎಂದಿಗೂ ಅಮರ.

# Service Tax Liability on Aggregator – Reverse Charge

**CA. Madhukar N. Hiregange** and **CA. Roopa Nayak**

The payment of service tax by the aggregator on services **involving** aggregator is the newest entrant to the ever expanding list of services in respect of which the persons other than service provider are made liable to ST.

It appears to be targeted at the taxi business with the brand name owner not being located in India. However it could look at tapping the branded services provided by small providers who are not capable of complying with the law.

The service tax on this segment raises questions on what amount to pay service tax, who has to raise invoice, availment of credits. In this article the paper writer has examined the concept as well as some issues which may arise.

**Introduction**

Service tax is leviable on the taxable services provided in territory of India, other than those in negative list or a subject matter of exemption. Place of Provision Rules sets out that if the taxable services are provided outside India, then there is no ST liability.

Every person providing a taxable service is required to pay a service tax at the prescribed rate. However in certain cases the service recipient is made liable to pay service tax on the services received. Since the person receiving is paying service tax, the mechanism is called as reverse charge.

Notification no.30/12-ST notifies the specified taxable services and the extent of service tax payable thereon by the personliable to pay service tax other than the service provider. In respect of services provided by a person involving an aggregator in any manner, the aggregator of service is person liable to ST under reverse charge.

In this backdrop we attempt to examine the levy of service tax on the aggregator and on the service providers to the aggregator. At present there is not much information and with some clarification matter may in future be made clear.

**Who is an Aggregator?**

The term aggregator in ST Rules at Rule 2(1)(aa)- means

- a person,
- who owns and manages a web based software application,
- and by means of the application and a communication device,
- enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;

The term"brand name or trade name" means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person

The present definition is only covering aggregator in respect of **services** and **not covering aggregator in respect of goods**.

When the operator collects charges from passengers directly working under aggregator's brand name, ST liability arises under reverse charge on the aggregator.

Example of Aggregator is A Co where the company manages the Mobile App and connects the owner/operator of radio cab with the passengers. Situation 1) Cab operator collects Rs 1000 from the passenger. Retains Rs 900 and pays Rs 100 to A Co.

Here A Co is liable on the Rs. 1000/- payments received by the operatorfrom customer, as these could be said to be services provided by operator involving the aggregator in any manner.

Alternately the aggregator receives the amount of Rs. 1000/- which get credited directly into account of the aggregator A Co. It retains Rs. 100 and pays out Rs 900 to the operator.Here it is liable as a service provider on its own account on Rs 1000 as a service provider on cum tax basis.

**Liability of Aggregator to pay service tax**

The service tax payment has to be made by the aggregator as follows:

- If aggregator is located in India, aggregator himself has to pay;
- If aggregator is not located in India but has a representative office located in India, then such representative office located in India has to pay;
- If an aggregator does not have any physical presence, or any representative, in such a case any agent appointed by the aggregator in taxable territory of India shall pay the tax.

Then ST liability arises under reverse charge on the aggregator. However when the aggregator directly provides services to its customers and bills, receives payment for same, the aggregator is liable as a service provider on its own account.

**Small Service Provider Exemption(SSP)**:

Notification no.33/12-ST exempts from ST, the taxable services provided by a service provider uptoRs. 10 Lakhs pa, provided previous year's value of taxable services provided is less than

Rs 10 Lakhs. This exemption is not available when the services are provided under the brand name of any other person. Such as services provided under brand name of aggregator.

**Issues**

**Issue: Whether services involving Aggregator would be covered by notification no. 33/2012-ST?**

***Comments**: When the service providers are providing branded services under brand name of aggregator. Then aggregator has to pay 100% of ST liability on such services. ST exemption uptoRs 10 Lakhs is not available in respect of such services.*

**Issue: Whether service providers are liable to service tax on the branded services provided by them?**

***Comments:**No, Buton own unbranded services, provided by the service providers directly to their customers, the service provider would be liable to pay service tax, subject to SSP exemption uptoRs 10 Lakhs pa. This is provided previous year value of taxable services is less than Rs 10 Lakhs pa.*

**Issue: Whether value of branded services provided by service providers on which aggregator pays service tax are treated as exempt services and require the service providers to reverse related credits?**

***Comments:**The turnover of service providers on which ST is paid by aggregator under reverse charge would not be treated as exempted service. There is no need for service providers providing services under brand name of aggregator, to reverse Cenvat credit related to the services on which aggregator pays Service Tax under reverse charge.*

**Issue: Whether the service providers could avail eligible credits related to the services on which aggregator pays Service Tax?**

***Comments:** Service providers could avail the eligible credit related to the services on which aggregator pays ST under reverse charge**if eligible**. Alternately could go for refund of eligible credits used for providing such services on which aggregator pays ST, as per Rule 5B of CCR which enables refund of accumulated CENVAT credit to service providers providing services taxed on reverse charge basis.*

**Issue: In aggregator model whether invoice has to be raised on customer by Aggregator or by service providers who provide services under brand name of aggregator? Who should receive payment from the customer?**

***Comments**: Aggregator would pay the ST on the gross amount billed towards branded services provided under aggregator brand name by service providers. The invoice could be raised by the service provider to end customer. The payment from customer could be received by service provider providing branded services.*

**Issue: Whether any declaration on invoices of service providers has to be made highlighting the service tax discharge by aggregator?**

***Comments:** The service providers can mention in the invoices raised, that "the service tax liability would be paid by the aggregator on these services as the person liable for paying ST for the taxable service as per Sl no. 11 of the notification 07 / 2015 –ST. In …….jurisdiction the service tax on gross amount is being paid by Aggregator.*

**Issue: Whether all end customers should access through web application directly?**

***Comments:**Wherever access is done on behalf of customers or by customers, it is sufficient compliance. In cases where the customer is not having access/capacity/not tech savvy then may get the service provider to do on his behalf. As long as taxable service is involving aggregator, the aggregator is liable to pay 100% ST under reverse charge.*

**Issue: How to disclose the transactions in ST-3 returns of Aggregator and branded service provider?**

***Comments**: The service tax liability is to be disclosed by aggregator in the ST-3 returns under For service receiver portion of ST payable sheet, in respective months from March 15 onwards at row- amount on which service tax is payable under partial reverse charge.*

*The services on which ST liability is paid by aggregator, is to be disclosed by the service provider as part of the value of gross taxable services in service provider portion of the ST-3 Service tax payable sheet. Then deducted at the row where it specifies- any other amount claimed as deduction, please specify. Deduct the value of the services on which ST is paid by Aggregator. Mention in the narration-service tax liability paid by aggregator under reverse charge vide notification no.7/15-ST.*

**Issue: Normally service tax paid under reverse charge is available as Cenvat credit to receiver of service. Whether aggregator is eligible to avail cenvat credit of service tax paid for aggregator services paid under reverse charge mechanism as per notification no. 30/2012-ST as amended by notification no. 7/2015-ST?**

**Comments**: *Yes, aggregator could avail the eligible Cenvat credit of ST paid on aggregator service under reverse charge. The credit could be set off against the output ST liability on taxable services provided by aggregator.*

**Conclusion**

The levy is to come into immediate effect. [1st March 2015]. Such aggregators may seek clarity and also make representation. However not paying the service tax may lead to demands with interest and penalty and therefore payment of ST under protest is advisable. Aggregators may also write under acknowledgement seeking confirmation of their understanding.

*In this article the paper writers have sought to examine the aggregator model and issues thereunder as the law stands today. Once any clarifications are issued there may be a need to revisit. For further clarifications send mail to*

*madhukar@hiregange.com or roopa@hiregange.com*

# INDIRECT TAXES UPDATE – MARCH 2015

**CA. C.R. Raghavendra,** *B.Com, FCA, LLB, Advocate*
and **CA. J.S. Bhanu Murthy,** *B.Com, FCA, LLB*

1) ***M/s Maruti Suzuki India Ltd Vs. CCe, 2015-TIOL-30-SC-CX***

***Facts:*** Assessee procured Motor vehicle parts such as bumpers, grills, etc. and cleared the same after undertaking process of Electro Deposition Coating (EDC) which was in the nature of anti-rust, on reversal of credit availed on such parts. Department taking a view that the duty shall be paid on the sale value as there was a value addition due to the processes undertaken.

***Held:*** Hon'ble Supreme Court referring to the provisions of Rule 57F of erstwhile Central Excise Rules, 1944 (similar to Rule 3 of present rules), held that the amount paid by the assessee is in terms of the provisions of law and no duty could be demanded on such clearance as no manufacture is involved. The process adopted would increase the shelf life of the spare parts and provide anti-rust treatment, but the same would not convert these bumpers, etc., into a new commodity known to the market as such.

2) ***M/s Larsen and Toubro Ltd. Vs. CCE, 2015-TIOL-527-CESTAT-DEL-LB:***

***Issue:*** Issue before the 5 member Bench of the CESTAT was whether composite contracts involving both the supply of goods as well provision of service shall have to be classifiable under 'Works Contract services' which is liable to tax w.e.f. 1.6.2007 or is liable to service tax under respective headings such as construction services or erection or installation services:

***Held:*** With a majority of 3:2, the larger Bench of the CESTAT held that the composite services would be classifiable under the respective headings of taxable services and are liable to service tax even for the period prior to 1.6.2007 irrespective of introduction of specific heading 'Works Contract services' w.e.f., 1.6.2007.

3) ***Raje Vijaysingh Dafale Ssk Ltd vs CCE, 2015-TIOL-535-CESTAT-MUM:***

***Issue:*** Assessee is the owner of the sugar factory which had borrowed money from Maharashtra State Co-operative Bank ltd. On account of default in repayment of loan, the Bank took over the factory and to recover the loan and leased the same to M/s. Rajaram Bapu Patil SSK Ltd in terms of tripartite agreement entered into between Bank., the appellant and M/s. Rajaram Bapu Patil SSK Ltd.

As part of the agreement, the lessee continued the services of the persons who were on the muster rolls of the borrower as permanent employees and paid salaries/wages to such employees directly. The department entertaining a view that the appellant is providing Manpower supply services to the lessee, demanded service tax on the amount of salaries paid to the employees.

***Held:*** Hon'ble Tribunal considering the facts held that it cannot be said that the appellant has provided any service by way of manpower supply to the lessee. Further, it was also observed that the salaries/wages were paid directly to the employees/workers and the appellant has not received any consideration for any services rendered.

4) ***SIKA India Pvt. Ltd. Ltd. Vs. CCE, 2015(317) E.L.T. 580(Tri.-Mumbi):***

***Issue:*** The assessee is engaged in manufacture and clearance of water resistant bonding agents under brand name 'Sika Latex and Sika Latex power'. The assessee claimed that the process involved in manufacture of above products is only diluting the basic raw materials (Styrofan D 623 and Apcotex TSN 100) procured from the suppliers and packing the same, and hence the process does not amount to manufacture. Department contended that the process adopted is not simple addition of water to dilute basic raw materials but involves a different process and the resultant product is commercially known as a distinct product.

***Held:*** Hon'ble Tribunal held that though the process involved may be the dilution of basic raw materials, but the same is not a simple process and appellant has not disclosed the process as it is a trade secret. Further from the literatures of the inputs and the final products it appears that the inputs and the final products are distinct products as inputs are not termed as water resistant bonding agents but are used in the modification of hydraulic setting system. Therefore, taking in to account the above factors, the Tribunal held that the process of dilution adopted by the assessee brings into existence a new product having different name, character and use and hence the process would amount to manufacture attracting levy of duty of excise.

5) ***ZF Steering Gear (India) Ltd. Vs. CCE, 2015(317) E.L.T. 580(Tri.-Mumbai):***

***Issue:*** Whether service of maintenance of windmill, which is located outside the factor but the power generated is used by the appellant in their factory through the grid, would qualify to be input services.

***Held:*** Hon'ble Tribunal allowing the credit held that the windmill was installed by the assessee to generate electricity and use the same for manufacturing activity. Further, it was held that merely because the electricity generated was directly received but the same was routed through the grid of electricity board, the credit cannot be denied.

6) ***Ulhas Vasant Bapat Vs. CCE, 2015(37) S.T.R. 1034(Tri.-Mumbai):***

***Facts:*** The appellant is engaged in the profession of providing spoken English courses. The appellant paid service tax on such services for the period from Jan 2004 to October 2004 but later claimed refund on the ground that the said services are exempt from service tax as vocational training. The refund was rejected and the matter was brought to Tribunal.

***Held:*** After considering the facts and notification, the Tribunal held that the training in language cannot be termed as vocational training. Training in languages has not been prescribed as vocational training in the list published by Govt of India vide Notification No. DGE&T -19(4)/2011-CD-PT dt. 19.06.20I3. Further, the Tribunal also observed even after undergoing training in English language for years in school and colleges, it is difficult to attain proficiency and it is inconceivable that in a matter of few weeks of training any proficiency or skill is achieved.

*[Note: Hon'ble Tribunal has erred in relying upon the Notification dated 19.6.2013 for denying the benefit of exemption relating to the period 2003-04.]*

*Authors can be reached on e-mail:*
*raghavendra@rceglobal.com; bhanu@vraghuraman.in*

## KSCAA Congratulates
## Members Co-opted to Various Committees of SIRC of ICAI
## from Karnataka for the year 2015-16

**CA. Dileep Kumar T.M.**
*Bengaluru*
Committee on Public Finance & Government Accounting

**CA. Ranganath M.S.**
*Bengaluru*
Committee on Public Finance & Government Accounting

**CA. Vinay Mruthyunjaya**
*Bengaluru*
Exposure Drafts Committee

**CA. Umesh Bolmal**
*Belagavi*
Branch Co-ordination Committee

**CA. Sumermal D. Ostawal**
*Hubballi*
Public Relations Committee

**CA. Prasanna Kumar K.**
*Mangaluru*
GMCS Co-ordination Committee

**CA. Ramachandran**
*Bengaluru*
Committee for Members in Industry

# Notified Budget Amendments under the Karnataka Commercial Tax Laws

**CA. G.B. Srikanth Acharaya** and **CA. Annapurna Kabra**

***Vide Notification No FD 40 CSL 2015, dated 31.3.2015,*** The Government of Karnataka exempts with effect from 01.04.2015 by amending Section 5(1) of the KVAT Act, 2003 on the following goods i,e Paddy and rice, Wheat, Pulses, Flour and soji of rice and wheat and Maida of wheat.

Section 5: Exemption of tax

(1) Goods specified in the First Schedule and any other goods as may be specified by a notification by the State Government shall be exempt from the tax payable under this Act [subject to such restrictions and conditions as may be specified in the notification].

Hereafter, the amendment is being made under section 5(1) of KVAT Act, 2003 to exempt the following goods from tax payable i.e. Paddy, rice, wheat, pulses, flour, soji of rice, wheat and Maida of wheat, vide notification No FD 40 CSL 2015, dated 31.3.2015.

***Vide Notification No FD 40 CSL 2015,dated 31.3.2015,*** The Government of Karnataka exempts with effect from 01.04.2015 by amending Section 5(1) of the KVAT Act, 2003 on the following goods like Footwear of all kinds costing upto RS. 500 per pair and Handmade floor mats, table mats and runners, utility bags and other utility products made of banana fiber and other natural fibers of agricultural waste, but excluding rubberized fiber products made of banana fiber and other natural fibers of agriculture waste.

Section 5: Exemption of tax

(1) Goods specified in the First Schedule and any other goods as may be specified by a notification by the State Government shall be exempt from the tax payable under this Act [subject to such restrictions and conditions as may be specified in the notification].

Hereafter, the amendment is being made under section 5(1) of KVAT Act, 2003 to exempt the above mentioned goods from tax payable under this Act, vide notification No FD 40 CSL 2015, dated 31.3.2015.

***Vide Notification No FD 40 CSL 2015,dated 31.3.2015,*** The Government of Karnataka reduces the rate of tax from 14.5% to 5.5% on the sale of Kerosene wick stoves, M- sand (Manufactured sand) and Mobile phone charger whether sold along with mobile phone in sealed pack or otherwise by amending Section 4(3) of the KVAT Act, 2003.

Section 4: Liability to tax and rates thereof

Sub- section1: Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(a) in respect of goods mentioned in,

I. Second Schedule, at the rate of one per cent,

II. Third Schedule, at the rate of five and one half per cent, and

III. Fourth Schedule, at the rate of twenty per cent.

(b) in respect of-

I. declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) at the maximum rate specified for such goods under Section 15 of the said Act;

II. cigarettes, cigars, gutkha and other manufactured tobacco at the rate of seventeen per cent.

III. other goods at the rate of fourteen per cent.

(c) in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract specified in column (2) of the Sixth Schedule, subject to sections 14 and 15 of the Central Sales Tax Act, 1956(Central Act 74 of 1956), at the rates specified in the corresponding entries in column (3) of the said Schedule

Sub section 3: The State Government may, by notification, reduce the tax payable under sub- section (1) in respect of any goods [subject to such restrictions and conditions as may be specified in the notification.]

Hereafter, as per notification No FD 40 CSL 2015, dated 31.3.2015 r/w section 4(3), the tax rate of Kerosene wick stoves, M sand (Manufactured sand) and Mobile phone charger whether sold along with mobile phone in sealed pack or otherwise have been reduced to 5.5%.

***Vide Notification No FD 40 CSL 2015,dated 31.3.2015,*** The Government of Karnataka notifies with effect from 01.4.2015, M- sand manufacturing machinery to be capital goods in the Entry No. 20 of the Third Schedule r/w section 4(1) (a) of the KVAT Act, 2003.

Section 4: Liability to tax and rates thereof

Sub section 1; clause (a): Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(a) in respect of goods mentioned in,

I. Second Schedule, at the rate of one per cent,

II. Third Schedule, at the rate of five and one half per cent, and

III. Fourth Schedule, at the rate of twenty per cent.

Third Schedule:

Entry 20: Capital goods as may be notified

Hereafter, as per Notification No FD 40 CSL 2015, dated 31.3.2015, the M-sand manufacturing machinery is being notified and hence shall be included in capital goods under Entry 20 of Third Schedule.

***Vide Notification No FD CSL 2015 dated 31.3.2015,*** The Government of Karnataka specifies that in entry serial no 51 of the Third Schedule r/w Section 4(1)(a) of the KVAT Act, 2003 and the goods mentioned in the column 3 in the table below with heading and sub- heading numbers under the Central Excise Tariff Act, 1985 will be considered as industrial inputs and packing material:

| Sl. No. | Heading and sub- heading No. | Description |
|---|---|---|
| (1) | (2) | (3) |
| 1 | 4415 20 00 | Pallets, box pallets and other load boards, pallet collar |
| 2 | -- | Pre- sensitized lithographic plate used in printing industry |
| 3 | -- | Industrial cables namely high voltage cables, XLPE cable, jelly filled cable, Optical Fibre cable and PVC cable. |

**Explanations:** (1) The rules for the interpretation of the Central Excise Tariff Act, 1985 along with explanatory notes as updated will apply for the interpretation of the entries in this notification.

(2) Where the heading or sub- heading of the commodities as described and their description is different in any manner with the corresponding description in Central Excise Tariff Act, 1985, then only those commodities described in column 3 of the table given above will be covered under this notification. However, other commodities covered in Central Excise Tariff Act, 1985 covered with corresponding description shall not fall in the scope of this notification.

Section 4: Liability to tax and rates thereof

Sub section 1; clause (a): Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(a) in respect of goods mentioned in,

I. Second Schedule, at the rate of one per cent,

II. Third Schedule, at the rate of five and one half per cent, and

III. Fourth Schedule, at the rate of twenty per cent.

***Vide Notification No 40 FD CSL 2015 dated 31.3.2015*** The tax rates is hereby increased on the sale of Aviation fuel, motor spirit other the petrol and aviation fuel as per the notification r/w Section 8-A(1) of Karnataka Sales Act, 1957 and Karnataka General Clauses Act, 1899 and in supersession of the Notification- I No. FD 165 CSL 2013 dated 30th July, 2013.

Section 8-A of Karnataka Sales Act: Power To State Government to notify exemptions and reduction of tax.

Sub section 1: The State Government may, by notification, make an exemption, or reduction in rate, in respect of any tax payable under this Act.

Notification- I No. FD 165 CSL 2013 dated 30th July, 2013.

As per this notification; Petrol was taxed at 25%, Aviation fuel at 28% and Motor spirit other than petrol and aviation fuel at 15.65%.

Hereafter, the tax rate of Petrol is increased to 26% and motor spirit other than petrol and aviation fuel to 16.65%.

**AMENDMENT IN SECTIONS**

Section 1: Short Title, extent and commencement

(1) This Act may be called the Karnataka Value Added Tax Act, 2003.

(2) It extends to the whole of the State of Karnataka.

(3) It shall come into force on such date as the Government may, by notification, appoint and different dates may be appointed for different provisions of the Act.

Hereafter, this section will state as follows:

(1) shall be called the Karnataka Value Added Tax (Amendment) Act, 2015 and

(2) it shall come into effect from the first day of April, 2015.

Section 4: Liability to tax and rates thereof

(1)Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(b) in respect of-

(ii) cigarettes, cigars, gutkha and other manufactured tobacco at the rate of *seventeen per cent.*

Hereinafter, the words seventeen percent shall be substituted with *twenty percent.*

Section 9-A: Deduction of tax at source (in case of works contract)

(1) Notwithstanding anything contained in this Act, the Central Government, or any State Government, or an industrial, commercial or trading undertaking of the Central Government or of any State, or any such undertaking in joint sector or any other industrial, commercial or trading undertaking or any other person or body as may be notified by the Commissioner from time to time or a local authority or a statutory body, shall

deduct out of the amounts payable by them to a dealer in respect of any works contract executed for them in the State, an amount equivalent to the tax payable by such dealer under the Act.

(5) The authority making deduction under sub- section (1), shall send every month to the prescribed authority a statement in the prescribed form containing particulars of tax deducted during the preceding month and pay full amount of the tax so deducted by it within twenty days after the close of the preceding month in which such deductions were made and the amount so payable shall for the purposes of Section 42 be deemed to be an amount due under this Act.

Hereafter, a proviso has been inserted: *Provided that among the authorities making deduction under sub-section (1), the specified class of authorities as may be notified by the Commissioner shall submit a statement in the prescribed form electronically and make payment electronically to the prescribed authority through the internet in the manner specified in the notification.*

**New section:**

Section 9-B: Deduction of tax at source (in case of purchases made by Government departments and others).

This section will state the following:

(1) Notwithstanding anything contained in this Act, the Central Government, or any State Government, or an industrial, commercial or trading undertaking of the Central Government or of any State, or any such undertaking in joint sector or a local authority or a statutory body not being a registered dealer under the Act or any other person or body as may be notified by the Commissioner from time to time shall deduct tax amount, out of the amounts payable by them to a dealer, at the rate applicable, in respect of purchase of goods effected by them in the State, with effect from such date as may be notified by the Commissioner.

(2) The authority making deduction under sub-section (1), shall send every month to the prescribed authority a statement in the prescribed form containing particulars of tax deducted during the preceding month and pay full amount of the tax so deducted by it within twenty days after the close of the preceding month in which such deductions were made and the amounts so payable shall for the purpose of Section 42 deemed to be an amount due under this Act. Provided that the specified class of authorities as may be notified by the Commissioner shall submit a statement in the prescribed form electronically and make payment electronically to the prescribed authority through the internet in the manner specified in the notification.

(3) Where default is made in complying with the provisions of sub-section (2), the prescribed authority may, after such enquiry as it deems fit and after giving opportunity to the concerned authority of being heard, determine to the best of its judgment, the amount of tax payable under sub-section (2) by such authority and the amount so determined shall be deemed to be the tax due under the Act for the purpose of section 42.

(4) If default is committed in the payment of tax deducted beyond ten days after the expiry of the period specified under sub-section (2), the authority making deductions under sub-section (1) shall pay, by way of interest, a sum equal to the interest specified under sub-section (1) of section 37 during the period in which such default is continued.

(5) The authority making deduction under sub-section (1), shall furnish to the dealer from whom such deduction is made, a certificate obtained from the prescribed authority containing such particulars as may be prescribed.

(6) Payment by way of deduction in accordance with sub-section (2), shall be without prejudice to any other mode of recovery of tax due under this Act from the dealer selling the goods.

(7) The burden of proving that the tax on such sale has already been remitted and of establishing the exact quantum of tax so remitted shall be on the dealer.

Section 10: Output tax, input tax and net tax

(3)Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.

Hereafter, the section will state the following:

(3) Subject to input tax restriction specified in sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and *relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods and shall be accounted for in accordance with the provisions of this Act.*"

Section 11: Input tax restrictions.

New sub- section: A new sub- section has been inserted after sub- section (c) which states the following:

(d) Notwithstanding anything contained in this Act, where any dealer has sold goods at a price lesser than the price of such goods purchased by him, the amount of input tax credit shall be restricted to the amount of output tax of such goods."

Section 22: Liability to register

(2)Every dealer who at any time has reason to believe that his taxable turnover is likely to exceed *seven and one half* lakh rupees during any year after the year ending Thirty First day of March, *2005* shall be liable to be registered and report such liability forthwith or on such date as may be notified by the Government.

(3) Every dealer whose taxable turnover exceeds sixty two thousand five hundred in any one month after the date from

which the tax shall be levied, in accordance with Section 3, shall register forthwith.

Hereafter, 'seven and one half' has been substituted by 'ten' and the figures '2005' has been substituted by '2015'.

And 'sixty two thousand five hundred' has been substituted by 'eighty three thousand three hundred thirty'.

Section 27: Cancellation of registration

1) In any case where, (c) the taxable turnover of sale of goods of a registered dealer has, during any period of twelve consecutive months not exceeded ***seven and one half*** lakh rupees

and for any other good and sufficient reason, the prescribed authority may, either on its own motion or on the application of the dealer, or in the case of death, on the application of the legal heirs, made in the prescribed manner, cancel the registration certificate from such date, including any anterior date, as it considers fit having regard to the circumstances of the case.

Hereafter, 'seven and one half' has been substituted with 'ten'.

Section 35: Returns

(1) Subject to sub- sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days or fifteen days after the end of the preceding month or any other tax period as may be prescribed.

[Provided that the specified class of dealers as may be notified by the Commissioner shall furnish particulars for preparation of the return in the prescribed form or submit the return in the prescribed form, electronically through internet in the manner specified in the said notification:

***Provided further that the specified class of dealers as may be notified by the Commissioner shall pay tax payable on the basis of the return, by electronic remittance through internet in the manner specified in the said notification.***

Section 62: Appeals

(5)The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Hereafter, a proviso has been inserted for the above sub- section which states the following:

Provided that the Commissioner may notify the website in which appeal shall be filed electronically.

Provided further that a single appeal may be preferred against orders of assessment or reassessment or any other orders or proceedings, in respect of more than one tax period of any financial year".

Section 63: Appeal to the Appellate Tribunal

(7)(b) The Appellate Tribunal shall dispose of such appeal within a period of *one hundred eighty days* from the date of the order staying proceedings of recovery of seventy per cent of tax or other amount and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said tax or other amount.

Hereafter, 'one hundred eighty days' has been substituted by 'three hundred and sixty five days'.

Section 72: Penalties relating to returns and assessment

A new sub- section: Hereafter a new sub- section has been inserted after the sub- section 3 which states:

Sub-section 3-A: "A dealer who fails to furnish or furnishes incomplete or incorrect particulars for preparation of the return as notified under proviso to sub-section (1) of section 35, as informed in a notice issued to him shall be liable to a penalty of fifty rupees for each day the return remains incomplete or incorrect".

*Authors can be reached on*
*query@dnsconsulting.net*

## KSCAA WELCOMES NEW MEMBERS - MARCH 2015

| | Name | Place | | Name | Place |
|---|---|---|---|---|---|
| 1 | KRITI THAKKAR SHARMA | BANGALORE | 6 | SURESH G.MUDDEBIHAL | BANGALORE |
| 2 | KUMUDVATHI V. | BANGALORE | 7 | RAMACHANDRA HEGDE | GOA |
| 3 | PREETHI VAIDYA K.S. | BANGALORE | 8 | SRIRAM N. | BANGALORE |
| 4 | NAGARAJ P.GIRI | BANGALORE | 9 | NIMESH KESARIMAL RUNWAL | BIJAPUR |
| 5 | BHAT SHIVARAM SHANKAR | BANGALORE | 10 | CHETAN KUMAR C.B. | BANGALORE |

# The Dominant Intention Test

**Vikram A. Huilgol,** *B.S.L, LL.B, LL.M from Harvard Law School.*
*Practicing Advocate*

On January 23, 2015, a Division Bench of the High Court of Punjab and Haryana struck down the levy of sales tax on the supply of drugs, medicines, implants, stents, and valves to patients during medical procedures and treatment. See Fortis Health Care Ltd. v. State of Punjab, W.P. Nos. 1922-24/2012. The Court held that the dominant intention of a contract for providing medical treatment is the rendering of a service and, accordingly, the value of drugs, implants, and stents supplied in the course of providing the service cannot be severed and brought to tax under the Punjab and Haryana Value Added Tax Acts. The dominant intention test applied by the Court in Fortis Health Care has often been used by courts in the context of composite contracts involving the supply of goods as well as the provision of services. This article briefly analyzes the genesis of the dominant intention test and traces its evolution to its current form and status.

**Pre-46th Amendment.**

As is often the case with any discussion regarding the levy of sales tax on composite contracts, the first case one must refer to is State of Madras v. Gannon Dunkerley, (1958) 9 STC 353. In Gannon Dunkerley, the Supreme Court, in essence, held that the States are not permitted to bifurcate a composite and indivisible contract and tax the value of goods used in the construction of an immovable property. In deciding the issue, the Court observed that the essential ingredients of a sale of goods are "an agreement to sell movables for a price and property passing therein pursuant to that agreement." The Court further observed that both the agreement and the sale should relate to the same subject-matter and there could not be an agreement relating to one kind of property and the sale of another. Accordingly, the Court concluded that a contract for constructing a building is not a contract for sale of goods because "[i]t was one contract, entire and indivisible and there was no separate agreement for sale of goods." Although the phrase was not expressly used, the essence of the judgment was that the dominant purpose of the contract was the construction of a building and not the transfer of property in goods and, therefore, the contract cannot be said to be one for the sale of goods used in the construction of the building.

**Post 46th Amendment.**

As a consequence of the Supreme Court's judgment in Gannon Dunkerley, the States were unable to levy sales tax on the value of movables used in the construction of a building, and in order to overcome the effect of the Supreme Court's judgment, Article 366(29-A) was inserted vide the Constitution 46th Amendment Act. Article 366(29-A)(b) expanded the definition of the phrase "tax on the sale or purchase of goods" to include "a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract."

Therefore, there was no question that after the insertion of Article 366(29-A)(b), the States were permitted to bifurcate an otherwise composite and indivisible contract, and levy tax on the value of goods used in the execution of the contract. However, an issue that the Supreme Court had to repeatedly grapple with was whether the dominant intention principle that was applied in Gannon Dunkerley was nullified by the 46th Amendment and the insertion of Article 366(29-A)(b).

In Rainbow Colour Lab v. State of Madhya Pradesh, (2000) 2 SCC 385, the issue was whether the contract of processing and supply of photographs, photo prints, and negatives was a contract of service or a works contract. A Division Bench of the Supreme Court held that the work done by a photographer is "only in the nature of a service contract not involving any sale of goods[.]" The Court observed, in pertinent part, that "the division of a contract under [Article 366(29-A)(b)] can be made only if the works contract involved a dominant intention to transfer the property in goods and not in contracts where the transfer of property takes place as an incident of contract of service." The Court, therefore, held that the dominant intention principle would apply to works contracts even after the insertion of Article 366(29-A) and, accordingly, it would be impermissible for the States to levy sales tax on the value of goods supplied during the course of executing a works contract where the dominant intention was to provide services.

The judgment in Rainbow Colour Lab was doubted by a Bench of three Judges of the Supreme Court in the case of Associated Cement Companies Ltd. v. Commissioner of Customs, (2001) 4 SCC 593. In the said case, the Court observed that, "[t]he conclusion arrived at in Rainbow Colour Lab case, in our opinion, runs counter to the express provision contained in Article 366(29-A) as also of the Constitution Bench decision of this Court in Builders' Association of India v. Union of India, (1989) 2 SCC 645."

Thereafter, in C.K. Jidheesh v. Union of India, (2005) 13 SCC 37, another Division Bench of the Supreme Court clarified that the observations in Associated Cement Companies were merely

obiter and that the judgment in Rainbow Colour Lab was still good law. It is pertinent to point out the oddity in the fact that a Division Bench of the Supreme Court found it fit to observe that a judgment rendered by a three-judge Bench was merely obiter and that a prior Division Bench decision was good law. In any case, after C.K. Jidheesh, there was considerable confusion as to whether the dominant intention test is still applicable and, if so, in what cases the said principle can be applied.

In Bharat Sanchar Nigam Ltd. v. Union of India, (2006) 3 SCC 1, a Constitution Bench of the Supreme Court succinctly dealt with the issue and agreed with the Court's decision in Associated Cement Companies. The relevant observations of the Court in this regard are as follows:

> *"After the 46th Amendment, the sale elements of those contracts which are covered by the six sub-clauses of clause (29A) of article 366 are separable and may be subjected to sales tax by the States under Entry 54 of List II and there is no question of the dominant nature test applying."*

Therefore, in Bharat Sanchar Nigam Ltd., the Supreme clarified in no uncertain terms that there is no question of the dominant intention test applying after the insertion of Article 366(29-A). Pertinently, the Court also observed as follows:

> *"[T]he test for composite contracts other than those mentioned in article 366(29A) continues to be – did the parties have in mind or intend separate rights rising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is as to what is 'the substance of the contract'. We will, for want of a better phrase call this the dominant nature test."*

The above position of law was reiterated by the Supreme Court in the cases of Larsen and Toubro Ltd. v. State of Karntaka, (2013) 65 VST 1, Kone Elevator India Ltd. v. State of Tamil Nadu, (2014) 71 VST 1, and State of Karnataka v. Pro Lab, C.A. No. 1145/2006. In Larsen and Toubro, the Supreme Court rejected the assessee's arguments and held as follows:

> *"The dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are of the nature of contemplated under Article 366(29-A). Even if the dominant intention of the contract is not to transfer the property in goods and rather it is the rendering of service or the ultimate transaction if transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if such contract has otherwise has elements of a works contract."*

Following the judgments in the Bharat Sanchar Nigam Ltd. and Larsen and Toubro, a Constitution Bench of the Supreme Court (Justice Kalifulla dissenting), in Kone Elevators, held as follows:

> *"[W]e are of the convinced opinion that the principles stated in Larsen and Toubro's case as reproduced by us hereinabove, do correctly enunciate the legal position. Therefore, the 'dominant nature test' or 'overwhelming component test' or 'the degree of labour and service test' are really not applicable. If the contract is a composite one which falls under the definition of works contract as engrafted under clause (29-A)(b) of the Article 366 of the Constitution, the incidental part as regards labour and service pales into total insignificance for the purpose of determining the nature of the contract."*

Lastly, on January 30, 2015, a three-Judge Bench of the Supreme Court, in Pro Lab, held that the observations of the Supreme Court in Rainbow Colour Lab were no longer good law. Interestingly, the Supreme Court stated that the observations in Rainbow Colour Lab had already been expressly been overruled in Associated Cement Companies' case and that, the dominant intention behind a contract falling within the purview of Article 366(29-A) is "rendered otiose or immaterial."

The essence of the Supreme Court's judgments is that in the case of composite contracts other than those mentioned in Article 366(29-A), the dominant intention test would have to be applied in order to decide whether the contract is for sale of goods or for rendering of services. As explained succinctly by the Supreme Court in Bharat Sanchar Nigam Ltd., it is impermissible to vivisect a contract other than one mentioned under Article 366(29-A) because, "unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to sell from the agreement to render service." Therefore, in such circumstances, the dominant intention of the parties to the contract would have to be discerned, and if the dominant intention is the sale of goods, then only sales tax would be leviable, and if the dominant intention is the rendering of a service, then only service tax would be leviable.

On the other hand, in the case of composite contracts that fall within the purview of Article 366(29-A), there is no question of applying the dominant intention test because the Constitution itself permits the vivisection of such contracts.

Taxability of Medicines, Stents, and Implants supplied during medical procedures.

As stated earlier, a Division Bench of the High Court of Punjab and Haryana, in the case of Fortis Health Care, struck down the levy of sales tax on the supply of drugs, medicines, implants, stents, and valves to patients during medical procedures and treatment. Incidentally, in Bharat Sanchar Nigam Ltd., which has been discussed in detail earlier, the Supreme Court had already discussed this very issue by way of an example, and the relevant observations of the Court are as under:

*"Of all the different kinds of composite transactions, the drafters of the 46th Amendment chose three specific situations, a works contract, a hire-purchase contract and a catering contract to bring within the fiction of a deemed sale. Of the three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been constitutionally permitted in clauses (b) and (f) of clause (29A) of article 366, there is no other service which has been permitted to be so split. For example, the clauses of article 366(29)(A) do not cover hospital services. Therefore, if during the treatment of a patient in a hospital, he or she is given a pill, can the sales tax authorities tax the transaction as a sale? Doctors, lawyers and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.*

*The reason why these services do not involve a sale for the purposes of entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in article 366(29A), unless the transactions in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale."*

Despite the Supreme Court's observations, sales tax authorities of various States levied tax on the value of medicines, stents, and implants supplied to patients during the course of providing medical services. The primary contention of the assessees was that sales tax cannot be levied on the value of goods that are supplied during the course of executing a composite contract that does not fall within the purview of Article 366(29-A). The assessees argued that the dominant intention of the contract was to provide medical services to the patient and that the supply of the stents, medicines, and implants could not be severed and brought to sales tax.

A similar issue had previously been considered by the Supreme Court in the case of Idea Mobile Communication v. Commissioner of Central Excise, (2011) 43 VST 1, in the context of SIM cards. In the said case, the issue that arose for the Supreme Court's consideration was whether the value of SIM cards sold by the assessee is exigible to service tax. After discussing the law laid down in Bharat Sanchar Nigam Ltd., the Court held as follows:

*"The position in law is therefore clear that the amount received by the cellular telephone company from its subscribers towards the SIM card will form part of the taxable value for levy of service tax, for the SIM cards are never sold as goods independent from the services provided. They are considered as part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material, i.e., SIM cards which on its own and without the service would hardly have any value at all."*

In the above case, the Supreme Court held that the dominant intention of a contract between a cellular telephone company and its subscribers is to provide mobile telephone services, and any goods that are supplied as part and parcel of the services provided cannot be brought to sales tax. It is, therefore, a settled position of law that if the sale of any goods is merely incidental to the service being provided, the value of the goods cannot be brought to sales tax. In other words, if the dominant intention of a composite contract is to provide services, the incidental element of sale of any goods in order to facilitate the rendering of the service is not exigible to sales tax.

Applying the above reasoning, the Punjab and Haryana High Court, in Fortis Health Care, held that "a contract of medical service cannot be said to be a contract for sale of a stent, or valve or of medicines to be used in a medical/surgical procedure." The Court further went on to observe that a medical procedure "cannot be completed without an implant/drugs and medicine." The Court, therefore, held that "the supply of drugs, medicines, implant, stents, valves, and other implants are integral to a medical service/procedure and cannot be severed to infer a sale[.]"

**Conclusion.**

In view of the above discussion, it is clear to see that the dominant intention test is still very much alive and kicking. However, it has no application in respect of composite contracts that fall within the purview of Article 366(29-A). Therefore, in the case of a works contract or a catering contract falling within the purview of Article 366(29-A), even if the dominant intention is the rendering of a service, the States are permitted to vivisect the contract and levy sales tax on the portion relating to sale of goods. In all other cases, that is, in cases where the composite contract is neither a works contract nor a catering contract, the dominant nature of the contract must first be ascertained. If the dominant intention of the parties was to sell/purchase goods and only incidental services are rendered, then only sales tax would be leviable. Similarly, if the dominant intention of the parties was to provide services and goods are supplied only incidentally as part and parcel of the service, the value of the goods cannot be separated and brought to sales tax.

*Author can be reached on*
*e-mail: vikram@kingandpartridge.in*

# KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

# 7/8, 2nd Floor, Shoukath Building, SJP Road, Bangalore 560 002
Ph 080-2222 2155, 2213 0724 Telefax 080-2227 4679 email: info@kscaa.co.in, kscaablr@gmail.com Website: www.kscaa.co.in

**New Membership Invited**

KSCAA offers new memberships. Membership is now open at the same old fees, which was fixed in 1998. Cost of service to members has gone up since then. Despite strong reasons and suggestions to increase the fees, Association has hitherto consciously kept the membership fees at low, with a view to broad-base the representation and encourage new membership. Application form is appended for you to take a leap and join the Association bandwagon, without further delay.

**Features**

- Regular events, seminars, training programmes, annual conference, study circle meetings • Informative monthly bulletin • Library • Portal
- Publications • Fellowship • Catalyst functioning • Activities for members & families • Situated in central location with meeting hall facilities
- Guided by the seniors and experts • Having half-a-century of experience • Plans to set up campus for Centre of Excellence.

## APPLICATION FOR MEMBERSHIP

Name (Mr. Mrs. Miss) _____

Father's Name _____

Mother's Name _____

Husband's Name _____

Membership No. of ICAI _____ Date of Registration with ICAI _____

Name of the Organisation _____

Status (Prop. / Partner / Employee) _____

Communication Address (Please tick) Office ☐ Residence ☐

Office Address _____

Phone: _____ Fax: _____ Mobile: _____ Email: _____

Residential Address _____

Educational Qualifications _____ Date of Birth _____ Blood Group _____ Name of Spouse _____

I am enclosing herewith Cash/Cheque/DD bearing No. _____ Dated _____ for Rs. _____

Date _____ Place _____ Signature _____

Proposed by Name _____ KSCAA Membership No. _____ Signature _____

Seconded by Name _____ KSCAA Membership No. _____ Signature _____

**Membership Fee Details**

| Fee Payable | Ordinary Member | Life Member Enrolment with ICAI | | Institutional Member |
|---|---|---|---|---|
| | | Less than 5 Years | 5 years & above | |
| a. Entrance Fee | 100 | 100 | 200 | 200 |
| b. Yearly subscription | 500 | - | - | - |
| c. Life-Membership | - | 1,000 | 2,000 | 5,000 |
| Total* | 600 | 1,100 | 2,200 | 5,200 |

*Service Tax applicable @ 12.36% extra.

1. Cheque/Draft/Bank Transfer may be drawn in favour of 'KSCAA'. Outstation payment by Demand Draft only.
2. The Subscription for the financial year becomes payable before 31st March every year.
3. Every member shall intimate, from time to time, all changes in their address and other particulars to be entered in the Register relating to them.
4. Enclose photocopy of ICAI Membership Certificate.

Mail to
Chairman, Membership Development Committee
KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION, # 7/8, 2nd Floor, Shoukath Building, SJP Road, Bangalore 560 002

FOR OFFICE USE ONLY

Admitted at the Meeting of the Executive Committee held on _____

Membership No. Allotted _____

President _____ Secretary _____

## EC Meeting & Thanks giving meet of 27th KSCAA Annual Conference

EC Members at EC Meeting

President CA. Raveendra S Kore presenting Conference details & thanking the Conference Committee Members for success of the Conference

Conference Committee Members at Conference Thanks Giving Meet

## Joint Programme with KASSIA - Seminar on Budget Amendments in Income Tax, KVAT & Service Tax


Dignitaries on the Dais


KASSIA Vice President presenting momento to President, KSCAA

CA. Raghavendra T.N.
Jt. Secretary, KSCAA


Presenting momento to Speaker

CA. D.R. Venkatesh

CA. Annapurna Kabra

CA. Madhukar N Hiregange

Cross section of participants

## Members in NEWS

CA. Mohandas Pai receiving Padma Shri Award from Hon'ble President of India


CA. K. Raghu, Immediate Past President, ICAI & CA. Nithin Mahadevappa, Regional Council Member participated in Live TV Programme on CA Career

New Horizon Group presenting Rs. 5 Crores cheque towards Swatch Bharath scheme to Prime Minister. Advisor of the Company CA. I.S. Prasad also seen.

"Registered" News Bulletin for India vide No.KA/BGGPO/2542/2015-17
RNI Regn. No. KARENG/2013/51293
Licensed to post without prepayment License No. WPP-309
Total No. of Pages Printed : 24
Date of Posting 14th or 15th of the month, Place of Posting at Bangalore PSO, Mysore Road, Bangalore 560026