KSCAA NEWS BULLETIN

Upholding the Moral & Professional Excellence

English Monthly
for Private Circulation only

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Vikaas ವಿಕಾಸ್
Expanding Professional Frontiers

27th KSCAA Annual Conference

10 Hrs* CPE Unstructured

on Saturday & Sunday
7th & 8th March 2015
Jnana Jyothi Convention Centre
Central College Campus, Bengaluru

Inauguration of CA Cricket League 2014 by CA. Chetan Venugopal

Prize distribution at Sports & Talent Meet 2014

From the President

ನೇಸರನು ತನ್ನ ಪಥವ ಬದಲಿಸುತಿರಲು,
ಮಾಗಿಯ ಚಳ ಮಾಯವಾಗುತಿರಲು,
ತನು ಮನದಲ್ಲಿ ಹೊಸ ಚೈತನ್ಯ ಮೂಡುತ್ತಿದೆ,
ಹೊಸ ಬೆಳೆ ಹೊಸ ಕ್ರಾಂತಿ ಜಗದಲ್ಲಿ ಹರಡುತ್ತಿದೆ.

ತಮಗೆಲ್ಲರಿಗೂ ಮಕರ ಸಂಕ್ರಾಂತಿಯ
ಶುಭಾಶಯಗಳು.....

Dear Professional Colleagues,

As a new year reform, the Central Government has set up NITI Aayog (National Institution for Transforming India) tasked with the role of formulating policies and direction for the Government in place of the Planning Commission. The Prime Minister will be heading this new institution, which will serve as 'Think Tank' of the Government - a directional and policy dynamo. During 65 years of the constitution of erstwhile Planning Commission (set up on 15th of March, 1950) the country has transformed from an under-developed economy to an emergent global nation with one of the world's largest economies. NITI Aayog is expected to emerge as an active & important institution that will play a pivotal role in India's development journey in the years to come.

After spearheading the Indian Space Research Organisation triumphantly through several milestones, its Chairman K Radhakrishnan retired on 31st December 2014 carrying the crowning glory of the much-hailed India's mission to Mars. We thank him for all the inspiring moments gifted by him and his team at ISRO to the nation.

Distinguished scientist, Padmashree Awardee A.S. Kiran Kumar from Karnataka has been appointed as Secretary, Department of Space and Chairman of ISRO. The last Kanndiga to hold this post was Shri. U.R. Rao, 20 years ago. Hearty congratulations to Shri. A.S. Kiran Kumar and best wishes for his new challenges including manned space mission.

Aggrieved by the inclusion of non-chartered Accountants in the definition of 'auditors' under section 63 of the Karnataka co-operative Societies Act, and in its endeavour to safeguard the interest of the profession, the executive Committee of KSCAA along with the some of the like thinking CA, has decided to file writ petition before the Honourable High court of Karnataka challenging the amendments in the Act.

Of late our profession is being targeted from various authorities for and it is we gear up to fight and uphold our professional interest and dignity. To cover the various expenses to protect our interest in the long run, KSCAA executive committee has decided to set up Legal fund and requests the members to generously contribute towards the legal fund and support KSCAA in its efforts. Further KSCAA expresses its appreciation of the contribution received from CAs and has decided to publish the names of the contributors in the News Bulletin. The initial list of contributors is published elsewhere in the news bulletin.

For the first time in Karnataka, ICAI is organising a mega International Conference at the historic Bangalore Palace in Bengaluru from 29th to 31st January 2015 with the theme **'Accountancy Profession: Building Global Competitiveness; Accelerating Growth,'** under the leadership of our beloved President CA.K. Raghu**.** We request all the members to participate in this mega event in good numbers and make it a grand success.

We were happy to share and enjoy the good moments of the cricket tournament and sports and talent meet organised by KSCAA, jointly with Bangalore Branch of SIRC of ICAI for members and their family. Both the events were very successful with a large number of members' participation. We congratulate all the winners and thank all the participants for making this as a wonderful get-together. We thank Bangalore branch of SIRC of ICAI for joining hands and supporting the event. The details of event results are published elsewhere in this news bulletin.

Karnataka State Budget for FY 2015-16 expected to be presented February 2015. We invite the members to send their suggestions for budget 2015 to info@kscaa.co.in latest by 31st January 2015. We will collate all the suggestions and submit to the Chief Minister for inclusion in the state budget.

The Annual Conference, a mega professional event of the Karnataka State Chartered Accountants Association, is scheduled to be held on 7th & 8th March 2015 at Jnanajyothi Auditorium, Bengaluru. This year' the Theme of the conference is ***"Vikaas – Expanding professional Frontiers"***. The event is designed to allow the participants to meet the very best speakers with varied expertise and to develop a multidisciplinary perspective on the profession. It will also help them to establish the networks for collaboration and exchange of ideas. Details of the program are published elsewhere in the news bulletin. We request the members to mark their calendar to attend the program and make this event a grand success.

"Arise, Awake and stop not till the goal is reached"

On the occasion of National Youth Day, 12th January, the birth anniversary of social reformer, philosopher, great thinker and maker of Modern India Sri Swami Vivekananda, we wish happy youth day to all young people and our professional colleagues and encourage all to apply Swamiji's thoughts and ideals in daily life for the peaceful world.

Wish you all a very happy Makara Sankranthi and a Happy Republic day.

In service of the Profession,

CA. Raveendra S. Kore
President

Workshop on TDS Provisions & Reassessment Procedures

Workshop on Practical Problems & Solutions in VAT Audit and input Credit

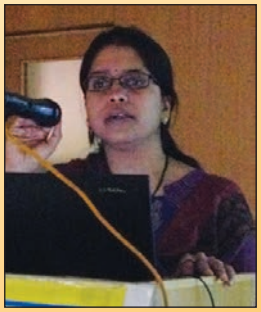

Photo Gallery : CA Cricket League and Sports & Talent Meet - 2014

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

email: info@kscaa.co.in

Website: www.kscaa.co.in

CA Cricket League 2014 held on 14.12.2014 and Sports & Talent Meet held on 21.12.2014

Organised by **Karnataka State Chartered Accountants Association(R)** *jointly with* **The Bangalore Branch of SIRC of ICAI,** Bengaluru

EVENT RESULTS

S.No.	Events	Winners	Runners
1	**SHUTTLE BADMINTON - DOUBLES**		
	A) FOR CA'S	CA.Bargeshappa T.P & CA.Manjunath M	CA.Ravindranath K & CA.Shreeharsha
	B) FOR FAMILY MEMBERS	Atharva Mutalik & Sandesh	Sanmith & Prakyath N Poojari
2	**SHUTTLE BADMINTON - SINGLES FOR CA'S**	CA.Ravindranath K	CA.Shreeharsha
3	**TABLE TENNIS** - FOR CA'S	CA. V P Raghuram	CA.Yathish (From Mysuru)
4	**TENNIS** - FOR CA'S	CA.Ravi Kumar & CA.Nagendra Bhat	CA.Sunil & CA. Vikas
5	**CARROM**-SINGLES		
	A) FOR CA'S	CA.Naveen K S	CA.Raghavendra M.N
	B) FOR FAMILY MEMBERS	Spoorthi M	Varun M
6	**CHESS**		
	A) FOR CA'S	CA. V P Raghuram	CA.Vinay N.S
	B) FOR FAMILY MEMBERS	Harish	Prashanth B.N
7	**DRAWINGS** FOR CHILDRENS	K.S.Prakruthi	Lakshmi Priya
8	**RANGOLI**		
	A) **ART CATEGORY**	Smt.Sandhya Kamalaksha	Smt.Savita R.Kore
	B) **CHUKKI / LINE CATEGORY**	J. Varalakshmi	Smt.Shilpa D.Sajjanar
9	**MUSICAL CHAIR**		
	A) FOR CHILDRENS	Kumari.Manasa Bargeshappa	Kumar.Shailendra.K
	B) FOR FAMILY MEMBERS	Smt.Shilpa D.Sajjanar	Smt.Savita R.Kore
10	**DANCE**	Varshini G	
11	**FLOWER DECORATION**	Smt.Lakshmi N.Nesur	Kumari.Apoorva Mutalik
12	**SINGING**	Kumari.Nithyashree Narayan	Kumari.Soundarya K
13	**CRICKET**	"KINCHA & CO - CA.Naveen Khariwal (Captain)"	"STAR RUNNERS - CA.Suhas(Captain)"
	A) **BEST BOWLER**	CA.Prashanth - STAR RUNNERS	
	B) **BEST BATSMEN**	CA.Rishi Jain - KINCHA & CO	
	C) **MAN OF THE SERIES**	CA.Gourav - STAR RUNNERS	

Operating Lease

CA. S. Krishnaswamy

(Continued from previous issue)

In this article I will address the following questions

1. What is a lease?
2. What is the difference between a finance lease and operating lease?
3. Does a mere lending on a new asset by a bank constitute a lease?
4. How to interpret clauses of a lease document? Principles

Lead case

1. **Asea Brown Boveri Ltd. V Industrial Finance Corporation of India [2005] 126 Comp Cas 332 (SC).**
2. **Association of Leasing and Financial Services Companies v Union of India [2010] 35 VST 549(SC)**

   Explained and discussed in
3. **Indus Bank Ltd V Addl CIT (2012)15 ITR (Trib) 89 (Mumbai) (SB)**

Distinction – Finance Lease Vs Operating Lease,

The distinction between finance lease and operating lease has been explained in a number of judicial decisions particularly in the context of allowance of depreciation. In the last article I dealt with accounting treatment of expenditure incurred on construction of buildings built on a land taken as 'operating lease'. In this article I discuss the distinction between Finance Lease and Operating Lease Qua depreciation eligibility.

In Indus bank Ltd v Addl CIT [2012] 15ITR (Trib) 89 (Mumbai) [SB]

1. The assessee bank advanced a sum of Rs.19.45cr under an agreement "purported to be a" operating lease
2. The assessee back never got possession of the assets which in this case was a bailer supplied by Thermax Corporation Ltd at a price of Rs.19.45 cr to Indo Gulf Fertilizers and Chemical Corporation.
3. The terms of lease were;

   Lease is for a fixed term and after the expiry of the lease period, the asset was sold back to the assessee.
4. Assessee bank claimed depreciation of Rs. 9.72 cr is lessor.

Tribunal held that the transaction did not amount to a 'lease 'was not a operating lease, was not sale and never lease back. It was a pure case of lending. The Tribunal fully analyzed the meaning of lease, operating lease finance lease, and sale and lease back. They held that the document of 'lease' in the case was only a make believe instrument to claim depreciation in the hands of assessee back which never possessed the asset.

Excerpts from the Judgment

Indus Bank Ltd v Addl CIT (2012) 15 ITR(Trib) 89 (Mumbai) (SB)

What is a lease?

"In order to decide the controversy, we need to appreciate the true meaning and purport of the term `lease'. Section 105 of the Transfer of Property Act, 1882 defines lease. It provides that "a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms." From the above definition it can be seen that the fundamental characteristic of any lease is to separate the "use" from "ownership" of the assets. As per the above section 105 of TPA a person owning the asset, called the `lessor', provides the asset for use for a certain period of time to another called the `lessee' for some consideration. In the present commercial world, there are different types of leases such as **finance lease, operating lease, deferred lease, skip lease, sale and ease back etc.** Presently we have been called upon to concentrate only on the finance and operating lease, as the assessee is claiming it to be a case of operating lease, whereas the Revenue has held the lease agreement as a finance lease.

Finance lease – Operating lease – difference

On a perusal of the meaning of operating lease and finance lease from the Guidance note and Accounting Standard 19 above we find there is not much difference between the two. Operating lease has been defined in both as a lease other than finance lease. And when we examine the meaning of `Finance lease' as per Guidance note along with Explanation given in para 4, it turns out that its scope is almost the same as that given in the AS 19. Rather the AS simply elaborates the concept of finance lease as given in the Guidance Note without making any qualitative addition to or subtraction from that".

Asea Brown Boveri Limited v. Industrial Finance Corporation of India [(2006) 154 Taxman 512 (SC)]

On making painstaking examination, the Hon'ble Apex Court has summed up the features of finance lease as under:-

"In our opinion, financial lease is a transaction current in the commercial world, the primary purpose whereof is the

financing of the purchase by the financier. The purchase of assets or equipment or machinery is by the borrower. For all practical purposes, the borrower becomes the owner of the property inasmuch as it is the borrower who chooses the property to be purchased, takes delivery, enjoys the use and occupation of the property, bears the wear and tear, maintains and operates the machinery/equipment, undertakes indemnity and agrees to bear the risk of loss or damage, if any. He is the one who gets the property insured. He remains liable for payment of taxes and other charges and indemnity. He cannot recover from the lessor, any of the abovementioned expenses. The period of lease extends over and covers the entire life of the property for which it may remain useful divided either into one term or divided into two terms with clause for renewal. In either case, the lease is non-cancellable."

Features of a Finance Lease

In the case of Association of Leasing & Financial Services Companies v. Union of India & Ors. [2010-(SC2)-GJX-0838-SC]

Hon'ble Supreme Court noticed the distinction between `finance lease' and `operating lease' as under:-

"In this connection, as and by way of illustration we need to give an illustration which brings out the distinction between a "finance lease" and "operating lease".

A finance lease transfers all the risks and rewards incidental to ownership, even though the title may or may not be eventually transferred to the lessee. In the case of "finance lease" the lessee could use the asset for its entire economic life and thereby acquires risks and rewards incidental to the ownership of such assets. In substance, finance lease is a financial loan from the lessor to the lessee. On the other hand an operating lease is a lease other than the finance lease. Accounting of a "finance lease" is under AS-19, which as stated above, is mandatory for NBFCs. It is a completely different regime. According to Chitty on Contract, a hire purchase agreement is a vehicle of instalment credit. It is an agreement under which an owner lets chattels out on hire and further agrees that the hirer may either return the goods and terminate the hiring or elect to purchase the goods when the payments for hire have reached a sum equal to the amount of the purchase price stated in the agreement or upon payment of a stated sum. The essence of the transaction is Bailment of goods by the owner to the hirer and the agreement by which the hirer has the option to return the goods at some time or the other. Further, in the bailment termed "hire" the bailee receives both possession of the chattel and the right to use it in return for remuneration to be paid to the bailor. Further, under the head "equipment leasing", it is explained that it is a form of long-term financing. In a finance lease, it is the lessee who selects the equipment to be supplied by the dealer or the manufacturer, but the lessor [finance company] provides the funds, acquires the title to the equipment and allows the lessee to use it for its expected life. During the period of the lease the risk and rewards of ownership are transferred to the lessee who bears the risks of loss, destruction and depreciation or malfunctioning. The bailment which underlies finance leasing is only a device to provide the finance company with a security interest [its reversionary right]. If the lease is terminated prematurely, the lessor is entitled to recoup its capital investment [less the realizable value of the equipment at the time] and its expected finance charges [less an allowance to reflect the return of the capital]. In the case of hire-purchase agreement the periodical payments made by the hirer is made up of:

(a) Consideration for hire

(b) Payment on account of purchase"

"Thus it is apparent that the broader guidelines laid down by the Hon'ble Supreme Court in the case of ABB Ltd have been reiterated in the latter case of Association of Leasing & Financial Services Companies v. Union of India & Ors [2010] 35 VST 549(SC); [2010] 5 GSTR 326(sc).

On a fair reading of the aforenoted two judgments rendered by the Hon'ble Supreme Court in the light of the Guidance Note and the AS 19, we can draw the following broad features of finance lease :-

- Such a lease is non-cancellable and there is a fixed obligation on the lessee for payment of lease money. In case lease is terminated prematurely by the lessee, the lessor is entitled to recover his investment with expected interest.
- Such a lease is always for a fixed period, which period is decided by taking into consideration the economic life of the asset.
- The initial lease period is settled in such a way so as to fully recover the investment of the lessor together with interest thereon.
- Lessor is always interested in the recoupment of his investment with interest in the shape of rentals over the period of lease and not the asset or its user.
- It is the responsibility of the lessee to bear all costs of insurance, repairs and maintenance and other related costs and expenses for the leased equipment.
- Though the equipment is chosen by the lessee but the payment to the supplier is made by the lessor. Thus it is the lessee who chooses the assets, takes delivery, enjoys the use of the asset, bears its wear and tear. It is the lessee who becomes the real owner of the asset.
- It is the lessee who pays taxes etc. in relation to such asset.
- The risks and rewards incidental to the ownership vest with the lessee.
- The features of bailment are absent in such a lease.
- The lessor simply holds the title of asset as his security till his investment and interest thereon is recouped. The

lessor is only symbolic owner during the period of lease and on the expiry of lease period, even such symbolic ownership also comes to an end".

Operating lease

Operating lease can be well equated with the bailment. Section 148 of the Indian Contract Act, 1872 defines `Bailment' as: `the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them'. Section 151 of the Indian Contract Act provides that in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed. Section 152 with the title `Bailee when not liable for loss, etc. of the thing bailed', which is quite relevant, provides that : "The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151". On a conjoint reading of the above relevant sections of the Indian Contract Act, it clearly emerges that the duty of the bailee to take care of the goods under bailment is equal to that a man of ordinary prudence takes. Taking such care of goods bailed excludes special care on account of the reasons beyond the control of bailee. It is simple and plain that if during the period of bailment, the item bailed is destroyed due to natural calamity etc. which is obviously beyond the control of bailee, no responsibility for such loss can be put on him. The bailee, in the absence of any special contract, can never be saddled with a liability towards the loss occurring to the goods bailed for the reasons absolutely beyond his control. That is the reason for which operating lease can be equated with bailment because it is the lessor who is responsible for the loss of goods during the lease period arising due to no fault of the lessee. For example, if a motor car is leased for a period of a week and during such period earthquake occurs causing immense loss to the car, in such a situation the lessee cannot be held responsible for the loss to the motor car. It is so because the occurrence of earthquake is a factor that surpasses the prescription of section 151 of the Contract Act, being the care which a man of ordinary prudence would under similar circumstances take of his own goods. In such a case it will be the lessor who will bear such loss. With this background let us turn to the terms of the agreement to ascertain whether the present lease can be equated with bailment. Clauses 13 and 14, which assume significance in the present context, read, as under:-

The Lessee shall bear the entire loss of or damage Destruction or to or the destruction of the Equipment or any of damage to the its integral parts due to any reason or cause Equipment whatsoever or due to its or any of its parts being rendered unfit for use or operation for any reason whatsoever and no such loss of or damage to or destruction of the Equipment or any of its parts shall impair / release or discharge the Lessee of its obligation to duly pay the lease rentals and observe and perform the terms and conditions herein contained. In the event of such loss or damage, the Lessee shall after obtaining the Lessor's prior consent in that behalf, at his (Lessee's) cost, replace the Equipment or the parts thereof as the case may be of Equipment or parts thereof of the same or like design and make, which in the opinion of the Lessor, are in good working order and condition and in all respect, comparable to the one to which loss / damage occurred or which are rendered unfit for the use or operation…….

The Lessee shall indemnify and keep indemnified the Lessor, at all times, against any loss or seizure of the Equipment under distress, execution or other legal process or destruction or damage to Third Party Claim the Equipment by fire, accident or other cause, from any claim or demand arising out of the storage, installation, use or operation of the Equipment or any risk or liability for death or loss of limb of any person whether employee of the Lessee or of third party and hold the Lessor harmless, against all losses, damages claim penalties, expenses, suits, or proceedings of Whatsoever nature made, suffered or incurred consequent thereupon and for this purpose take out such workmen's compensation third party insurance cover as may be necessary, customary to the practice in the business carried on by the Lessee or as may be directed by the Lessor, in that behalf."

Difference between a simple loan and finance loan

It is important to note the underlying basic distinction between advancing a simple loan and finance lease. Whereas financing is genus, finance lease is its species. **In the case of a loan simpliciter, the lender only advances loan without acquiring even a nominal title in the asset** against which loan is given. It has been noted above that a lease contemplates a lessor, a lessee and the asset which is leased. In that view of the matter, the very nature of finance lease presupposes that existence of the lender as a lessor. The essence of finance lease and loan simpliciter is same, that is, to advance money to the borrower by the lender. To provide sanctity to the finance lease, the lessor acts as a nominal or symbolic owner. If the element of lessor as a nominal owner is removed, the transaction of financing will go out of the ambit of `finance lease' and fall within the overall category of advancing simple loan. That is why there has to be necessarily some nominal owner of the asset in a case of finance lease".

Interpretation

The Tribunal then proceed to hold after analyzing all the clauses of the lease deed that it is a finance lease although the lease deed may term it an operating lease (see @p.118,119). In interpreting a document the pith and substance of the agreement must be seen. The reality of transaction must be understood (p.130).

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REGISTRATION UNDER KVAT ACT, 2003

[SECTION 22 TO 26 OF KVAT ACT, 2003 & RULE 4 TO 12 OF KVAT RULES, 2005]

CA. T N Raghavendra and **CA. Veerabasanna Gouda S**

S.No.	Who	When
1.	A dealer whose taxable turnover is likely to exceed Rs.7,50,000/- at any time during a year	Forthwith
2.	A dealer whose taxable turnover exceeds Rs.62,500/- in any one month	Forthwith
3.	Transferee to whom a business / part of the business is transferred, if the transferor was liable to be registered under the Act.	On the date of transfer, if the Transferee dealer is not already registered
4.	A dealer who procures taxable goods from outside the state as result of purchase or otherwise [Interstate purchase / stock transfers]	After such first purchase or procurement irrespective of value of goods
5.	Exporter of taxable goods	After such first export
6.	A dealer who effects sale of taxable goods in the course of interstate trade or commerce or dispatches taxable goods to a place outside the state [Interstate sale / stock transfers]	After such first sale / dispatch
7.	Causal trader / Non-resident dealer or his agent	Before commencement of business irrespective of value of taxable goods sold
8.	Work Contractor [A contract which involves supply of materials &labour. For example: Construction contracts etc.,]	At the end of the month in which execution of works contract is carried out
9.	Liability to Registration under CST Act	When there exists a liability under CST ACT to pay tax
10.	Liability to Register under KTEG Act	When a Dealer Purchases Goods which are taxable under the Act like Plant and Machinery, Petroleum Products, DG Sets, Lifts and Elevators, Tobacco Products, Cloths.

Note: While determining the turnover criteria given at (1) & (2) above, if the Registering Authority has a reason to believe that the business of the dealer is deliberately broken up into smaller businesses to avoid registration, the Registering Authority shall have the power to issue notices to all such dealers for registering a single dealer.

Voluntary Registration [Section 23]

A dealer though not liable for registration under Section 22 of the Act, shall voluntarily make an application for registration to the prescribed authority in the prescribed form & in the prescribed manner. **He shall be eligible for deduction of input tax only from the date on which he becomes liable for registration under Section 22 of the Act.**

Suo-motu Registration [Section 24]

Where a dealer liable to be registered has failed to inform the competent authority of his liability to be registered, the competent authority may after conducting such survey, inspection or enquiry proceed to register such person under Section 22 of the Act.

Registration procedure

1. The dealer is required to submit a combined application in Form VAT-1 online along with registration fees of Rs.500/-
2. Following documents are required to beuploaded at the time of registration as per [Notification NO:CCW/ CR.76/2011-12 dated 26/03/2014 w.e.f. 1-06-2013]–

a) Recent Photograph of Proprietor/Kartha of HUF/Each Partner/authorized person in the case of Company, Trust or Society.

b) PAN Card of the applicant

c) Identity & Address proof of the applicant – Driving licence / Voter ID / Passport / Aadhar Card / Gas Bill / Telephone bill (recent document)

d) Address proof of business premises - Rental Agreement / Lease Agreement in case of rented building accompanied by an electricity bill. In case of own building copy of the receipt of the property tax paid.

e) Copy of the updated pass book or Bank Statement

3. Entity specific documents in addition to the above documents –

Firm	HUF	Company
PAN Card of each partner	Details of members of HUF	PAN of Directors and Authorized Person.
Address proof of each partner	Vamshavruksha (Family Tree)	Director's photographs
Partnership Deed		Photographs of local authorized person
		Address proof of directors & authorized person
		Certificate of Incorporation
		Memorandum & Articles of Association
		Board Resolution
Trust	**Society / Association of Persons (AOP)**	**Non Resident Dealer**
Trust Deed & Certificate of Registration	Memorandum & Bye-Laws of the Society / AOP	Domicile Certificate issued by the Revenue Authority certifying that the applicant is a resident of the declared place of residence
PAN Card of Trustees	Registration Certificate	Copy of VAT Registration Certificate issued in other States
Address proof of Trustees	Resolution of the Managing Committee	
Resolution of the Trust	Photographs & Address proof of the Managing Committee	

4. After payment of Registration fee, the LVO / VSO shall assign the work of verification of original documents uploaded / submitted along with the application and visit to the business premises by the CTI, who shall complete them within the specified time.

5. Payment of Security Deposit [as per CCT's Circular No.16/2005 dated 03/08/2005]

Turnover Criteria	Security Deposit Amount	Mode of payment
Turnover < Rs.10 Lakhs	Rs.3,000/-	Cash / NSC
Turnover > Rs.10 Lakhs	Rs.5,000/-	Cash / NSC
Turnover > Rs.25 Lakhs	Rs.10,000/-	Cash / NSC

Note: Subsequent to issue of RC, the LVO/VSO may insist on additional security deposit depending upon the tax compliance level of the dealer/safe custody of statutory forms/protect the revenue. The reasons should be recorded in writing before issue of endorsement for additional security deposit.

6. Issue of Registration Certificate to the Dealer. The time limit fixed for issue of RC is as below:-

Criteria	Time limit
In respect of Bangalore City	**5 Working days**
Outside Bangalore City	**8 Working days**

Steps in Registration process

1. Uploading of Form VAT 1 into Commercial Taxes portal
2. Payment of Registration fees online
3. Submission of Form VAT 1 with prescribed documents as above the jurisdictional LVO for verification
4. Visit by the jurisdictional CTI of the principal place of business & additional places of business of the dealer. Presence of Proprietor / Managing Partner / Managing Director / Managing Trustee / Authorized Signatory as the case may be of the dealer is must at the time of visit by the CTO. Care should be taken to display the Name board outside all the places of business of the dealer & all the prescribed documents in original should be kept ready at the principal place of business for verification by the CTI at the time of visit.
5. Visit Report by the CTI to the jurisdictional LVO.
6. Payment of Security Deposit [as determined by the LVO] & Profession tax
7. Issue of Registration Certificate under KVAT, CST, KTEG & KTPTC&E Acts as the case may be
8. Do not forget to carry Form VAT 555 [Authorization Letter] for appearance services & to procure Original RC

Practical aspects:

1. Try to collect all the documents, scan and then only start filing online application.
2. While scanning the documents the resolutions of documents to be fixed at 200 MB.

3. Once the online application is made an acknowledgement number is allotted called as Ack. No. once the ACK. No is generated, make sure that within 7 days the one time Registration Fee of Rs.500/= is paid.
4. Apart from the above documents collect following information from the Client

a. Trade Name

b. Additional Place of Business details including Godown situated within Karnataka and Outside Karnataka.

c. Nature of Business of the Client.

d. Whether he is going start the Business as Wholesaler/ Retailer/Manufacturer/Hotelier.

5. Take the exhaustive list of commodities going to be dealt by the Dealer so that all goods are properly disclosed in the VAT-1 Form.

a. In case of Manufacturing Unit List of Raw Materials, Consumables, Finished Products and packing materials

b. In case Traded Goods intended to be brought for Trading, and packing materials

c. In case of Manufacturer, Works Contractor List of Machineries, Machinery Spare-parts intended to bring from outside the state.

6. In case of CST Registration care shall be exercised to fill list of Goods in below mentioned categories appropriately

a. For Resale

b. For Use in Manufacture or process.

c. For use in Mining.

d. For use in Generation of Electrical Power

e. Packing Materials

7. In case of Manufacturing Unit both Raw Materials and Finished Products needs to be appropriately disclosed.
8. In case of Works Contractor whether the Dealer is going to register himself as a Regular VAT Dealer or Composition Dealer.
9. In case of a Hotelier/Restaurant/Bakery/ Stone Crushing Units/Small Retailers, whether the Dealer is going to register himself as a Regular VAT Dealer or Composition Dealer.
10. Date of Commence of Business
11. Turnover Estimated
12. Whether Dealer is going to import Goods on a Regular Basis?
13. Whether the Dealer is going Export Goods on a Regular Basis?
14. Whether the Dealer is going to make sale of Exempted Goods?
15. Telephone and Contact Number of Authorized Person.
16. For every place of Business only one Dealer will be allotted Registration. As per the instructions issued by Commissioner there cannot be a common Entrance to Different Dealers with Two TIN Numbers.
17. As per the new System the VAT Department officials will come for inspection with a GPRS tracking device which verifies and tells whether there already the place of Business has been registered by some other Dealer. In such a scenario additional safeguards needs to be taken care.
18. Group Companies having same Registered Offices and maintaining Accounts at Common Place carrying on business at distinct places can be granted Registration subject to No-Objection from All the Entities carrying on Business at such place.
19. Verify whether Dealer is required to be registered under Profession Tax Act for himself as well as an Employer authorized to collect and Remit Tax from Salaries paid to his employees.
20. Verify any exemption is available under Karnataka Profession Tax Act. Like Senior Citizen or Registration obtained for less than 120 Days in a financial year.

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Goods and Services Tax – Constitution Amendment Bill

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On December 19, 2014, the Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 ("the Amendment Bill") was introduced in the Lok Sabha by Mr. Arun Jaitley, the Union Minister for Finance. This is the second Constitutional Amendment Bill placed in Parliament with the intention of paving the way for the introduction of the Goods and Services Tax ("GST"). The previous Amendment Bill, the 115th Constitution Amendment Bill, introduced by Mr. Pranab Mukherjee on March 16, 2011, lapsed due to the lack of any political consensus. The 122nd Constitution Amendment Bill is largely a reproduction of the previous Amendment Bill, with some small, but significant changes. This article briefly analyzes some of the proposed Constitutional amendments that would set the wheels in motion for, arguably, the most historic upheaval of indirect taxation in India since independence.

Power to levy taxes on goods and services

The Union and State Legislatures derive their power to legislate on specific subject-matters from Article 246, read with the VII Schedule to the Constitution. Article 246(1) states that Parliament has exclusive power to make laws with respect to matters enumerated in List I in the VII Schedule ("the Union list"). Article 246(2) states that both Parliament and the State Legislatures have power to legislate on matters enumerated in List III in the VII Schedule ("the Concurrent list"). Article 246(3) empowers the State Legislatures to legislate on matters enumerated in List II in the VII Schedule ("the State list").

Article 246-A, which is sought to be introduced by the Amendment Bill, reads as follows:

"Article 246-A(1). Notwithstanding anything contained in articles 246 and 254, Parliament, and subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State."

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation – The provisions of this article shall, in respect of goods and services referred to in clause (5) of article 279-A, take effect from the date recommended by the Goods and Service Tax Council."

The insertion of the above provision is necessitated by the fact that under the existing Article 246, read with the subject-matters enumerated in the Union and State lists, the power to enact laws that provide for the levy of taxes on goods and services is divided between the Union and States. For instance, only Parliament can pass laws in order to levy excise duty, customs duty, and service tax, whereas only the State Legislatures can legislate with respect to taxes on sale of goods, entry of goods, luxuries, etc. Therefore, under the current Constitutional scheme, it would not have been possible for either Parliament or the State Legislatures to enact laws that provide for a common goods and services tax.

Article 246-A(1) seeks to remedy the situation by providing an additional and independent source of power to both the Union and the States to legislate with respect to GST. Therefore, the source of power to legislate on GST cannot be traced to the Union, State, or Concurrent Lists of the VII Schedule. Instead, Article 246-A itself provides both Parliament and the States the power to legislate on GST. At this stage, one may wonder why the power to levy taxes on goods and services was not included in the concurrent list, particularly because both Parliament and the State Legislatures are competent to enact laws with respect to subject-matters enumerated in the concurrent list. The answer possibly lies in the fact that, with respect to subject-matters enumerated in the concurrent list, if there is any repugnancy between a law made by Parliament and a law made by the State legislature, the law made by Parliament would prevail. See Article 254. With regard to GST, it is clear that the States did not want to provide anydeference to laws made by Parliament and, therefore, instead of including the subject under the Concurrent list, a separate source of power is intended to be created.

Clause (2) of Article 246-A, however, provides Parliament with the exclusive power to legislate when the supply of goods, or services, or both takes place in the course of interstate trade or commerce. Therefore, State Legislatures cannot enact laws that provide for the levy of GST when the supply of goods and services is in the course of interstate trade or commerce.

The Explanation to Article 246-A relates to the levy of tax on petroleum products, namely, petroleum crude, high speed diesel, petrol, natural gas, and aviation turbine fuel. Petroleum products are currently proposed to be kept outside the purview of GST, and the Explanation to Article 246-A states that the levy of GST on these products will take effect from the date recommended by the Goods and Services Tax Council ("GST Council"), constituted under Article 279-A.[1]

[1]Article 279-A is also sought to be inserted vide the Amendment Bill. The said provision is discussed in greater detail subsequently in this article.

Apportionment of Taxes between the Union and States

Clause (1) of Article 269-A states that GST "on supplies in the course of interstate trade and commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as provided by Parliament by law on the recommendation of the Goods and Services Tax Council." As a consequence of the insertion of Article 269-A(1), Article 268-A, inserted by the Constitution (Eighty-eighth) Amendment Act, 2003, which stated that taxes on services shall be levied by the Government of India and appropriated by the Union and the States in the manner prescribed by Parliament, has been deleted.

Import of goods and services deemed to be in the course of interstate trade and commerce

The Explanation to Article 269-A deems the supply of goods and services in the course of import into the territory of India to take place in the course of interstate trade and commerce. Consequently, duties on imports, too, shall be levied by the Government of India and apportioned between the Union and the States in the manner provided by Parliament.

Parliament to formulate principles to determine when a sale or supply is in the course of interstate trade and commerce

Clause (2) of Article 269-A allows Parliament to, by law, "formulate the principles for determining the place of supply, and when a supply of goods, or services, or both, takes place in the course of interstate trade or commerce." This provision is similar to Article 286(2), which permits Parliament to formulate principles to determine when a sale or purchase of goods takes place in the course of interstate trade or commerce.

Pertinently, according to Article 269-A(2), Parliament has the power to formulate principles to determine: (1) the place of supply of goods and services, and (2) when the supply of goods and services takes place in the course of interstate trade and commerce. Therefore, it is likely that the Central GST law will include provisions, similar to Section 3 of the Central Sales Tax Act, which will prescribe when a supply of goods and services takes place in the course of interstate trade and commerce. The law will also contain provisions which will specify the place of supply of the goods or services and, accordingly, the State in which tax will be payable.

The Goods and Services Tax Council

Article 279-A provides for the constitution of a GST Council by the President of India, within sixty days from the date of commencement of the Constitution (One Hundred and Twenty Second Amendment) Act, 2014. The GST Council shall comprise of the following persons: (1) the Union Finance Minister, who will be the Chairperson of the Council; (2) the Union Minister of State in charge of Revenue or Finance; and (3) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government. The Council, therefore, will be represented by the Union Government as well as each of the State Governments. The primary function of the GST Council is to make recommendations to the Union and the States on the following subject-matters: (1) the taxes and levies that are to be subsumed in the GST; (2) goods and services that are to be exempted; (3) model GST laws, principles of levy, apportionment of the Integrated GST, and theprinciples that govern the place of supply; (4) threshold limit of turnovers below which goods and services will be exempt; (5) rates of tax, including any special rates to be applicable for a specified period to raise additional resources during national calamities or disaster; (6) special provisions with respect to certain States; and (7) any other matter relating to GST. Clause (6) of Article 279-A states that the GST Council shall, while discharging its functions, be guided by the need for a harmonized structure of goods and services taxes and for the development of a harmonized national market for goods and services.

According to clause (9) of Article 279-A, every decision of the GST Council shall be taken at a meeting (the quorum for each meeting is prescribed as one half of the total number of members) by a majority of not less than three-fourths of the "weighted votes of the members present and voting." Pertinently, "the vote of the Central Government shall have the weightage of one-third of the total votes cast," and "the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast." For the sake of brevity, the weighted voting system is not explained in this article in any detail.[2] It would suffice to state that through the weighted voting system, it is ensured that neither the Central Government nor the State Governments would have primacy in the GST Council with regard to voting on any critical issues relating to the GST.

Restriction on the power of States under Article 286

Article 286 mandated that no law of a State shall impose a tax on the sale of goods where such sale takes place outside the State, or in the course of the import or export of goods. The said Article is proposed to be amended by stating that no law of a State shall impose, or authorize the imposition of a tax on "the supply of goods or of services, or of both where such supply takes place" outside the State, or in the course of import or export of goods and services. Clause (2) of Article 286, too, has been proposed to be amended. After amendment, the said provision would read as follows: "Parliament may by law formulate principles for determining when a supply of goods, or services, or both takes place in any of the ways mentioned in clause (1)." Therefore, Parliament would be required to, by law, formulate principles for determining when the supply of goods or services takes place outside a State, and when it can be said to take place in the course of import or export.

[2]To understand how the weighted voting system works, reference may be had to the Statement of Objects and Reasons appended to the Amendment Bill, which explains the system by way of an illustration.

Pertinently, the Amendment Bill proposes to omit Article 286(3). The said provision stated, in pertinent part, that any law of a State, in so far as it imposes a tax on goods declared to be special importance ("declared goods"), shall be subject to restrictions imposed by Parliament. By deleting clause (3) of Article 286, the said restriction will no longer apply. The intention behind the omission of the said provision is clearly discernable from the Statement of Objects and Reasons to the Amendment Bill, wherein it has been stated that the proposed Bill seeks to dispense with the concept of declared goods of special importance under the Constitution.

Definitions under Article 366

Clause (12-A) is proposed to be inserted in Article 366. The said provision defines "goods and services tax" to mean "any tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption." Therefore, it is clear that alcoholic liquor is intended to be kept outside the purview of GST.

The definition of "goods" under Article 366(12) has been retained. The term goods "includes all materials, commodities, and articles." "Services" has been defined by Article 366(26A) to mean "anything other than goods." In my opinion, the proposed definition of services appears to be overly broad, and it is likely that the definition will be suitably altered before the Bill is passed by Parliament.

Interestingly, the definition of "tax on sale or purchase of goods" under Article 366(29A) has been retained. The Constitution (One Hundred and Fifteenth Amendment) Bill, which was introduced by the UPA Government, had proposed to omit Article 366(29A) in its entirety.

Power of Parliament to Amend the Constitution

Article 368(1) confers power on the Parliament to amend the Constitution and sets out the procedure to be adopted in order to carry out an amendment. Under the said provision, the Constitution can only be amended if the amendment bill is passed in each House of Parliament by a majority of the total membership of that House and by not less than two-thirds of the members of the House present and voting. As per the proviso to Article 368(1), certain parts of the Constitution can only be amended if, in addition being passed with the majority described above, the amendment is also ratified by not less than one half of the State Legislatures.

The Amendment Bill seeks to include Article 279-A within the purview of the proviso to Article 368(1). Therefore, Article 279-A can only be amended if the amendment, after being passed by the requisite majority in both Houses of Parliament, is ratified by half of the State Legislatures. Article 279-A, which provides for the constitution of the GST Council, has, therefore, been placed on apedestal, along with other important provisions of the Constitution, by making its amendment subject to the safeguards specified in the proviso to Article 368(1).

Amendments to the Seventh Schedule

As explained earlier, the Seventh Schedule to the Constitution contains the Union, State, and Concurrent lists. The Amendment Bill seeks to make some significant changes to the taxing powers of the Union and the States by amending certain entries under the Union and State lists.

Entry 84 of the Union List currently provides for the levy of excise duty on goods manufactured or produced in India, except alcoholic liquors, narcotic drugs, and medicinal preparations. The said Entry is proposed to be substituted and the new Entry provides for the levy of excise duty on only the following goods manufactured or produced in India: (1) petroleum crude; (2) high speed diesel; (3) petrol; (4) natural gas; (5) aviation turbine fuel; and (6) tobacco and tobacco products. Therefore, once the amendment takes effect, the Union would be permitted to levy excise duty on only the above mentioned goods manufactured in India. Excise duty on all other goods manufactured or produced in India would be subsumed into the GST.

Furthermore, Entries 92 (taxes on the sale or purchase of newspapers) and 92-C (taxes on services) of the Union Listare proposed to be omitted.

In the State List, Entry 52, which provides for taxes on entry of goods into a local area, has been proposed to be omitted as entry tax will be subsumed by GST. Entry 54, which provides for taxes on sale or purchase of goods has been proposed to be substituted, and the new Entry provides for the levy of tax on sale of petroleum crude, natural gas, aviation turbine fuel, petrol, high speed diesel, and liquor for human consumption. The above mentioned goods will, therefore, continue to be taxed under the respective sales tax/VAT statutes of the States. As sales tax shall continue to be levied on certain commodities, Entry 92-A of the Union List, which provides for taxes on the sale or purchase of goods where such sale or purchase takes place in the course of inter-state trade or commerce, will remain unaltered. Therefore, the Central Sales Tax Act would continue to be in force and will be applicable to only those goods that are mentioned under the new Entry 54 of the State List.

Entry 55 of the State List, which provides for taxes to be levied on advertisements, has also been proposed to be omitted. Entry 62 has also been proposed to be substituted. Entry 62 currently reads as follows: "taxes on luxuries, including taxes on entertainments, amusements, betting and gambling." As luxury tax and entertainment tax is proposed to be subsumed by GST, the new Entry 62 reads as follows: "Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council." Therefore, by amending Entry 62, the power of the States to levy entertainment tax will severely be curtailed and will be restricted only to the extent mentioned under the proposed new Entry 62.

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Special Rebate and Partial rebate under the Karnataka VAT Law

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

While Section 10 of the KVAT Act, 2003 provides for the rebate scheme, the conditions and restrictions for such input tax rebate/deduction scheme are provided in Sections 11, 12, 13, 14 and 19. The main principle of the conditions / restrictions on rebating is that the dealer should be liable to pay tax on his sales (intra-State or inter-State) or should be exporting goods outside the country.

The tax paid by a trader on the goods, which are purchased and subsequently transferred to place outside Karnataka, not as a sale (which is generally called as a stock transfer) or Where the tax paid by a manufacturer on purchase of goods used as inputs in the manufacture, processing or packing of other taxable goods which are dispatched to a place outside the State as stock transfer, the Input tax will be calculated as provided in special rebating scheme. Accordingly the difference between the rates of Input tax charged at a rate higher than 2% is allowed as input tax.

The Tax paid on petroleum products like naphtha, liquefied petroleum gas, furnace oil when used as fuel in motor vehicles is not considered to be input tax. However if the same are used as fuel in production of taxable goods or captive power, input tax will be the difference between the rate of input tax charged at a rate higher than 2% is allowed as input tax to be deducted out of output tax.

Special Rebating Scheme (Section 14): Input tax credit can be taken on inputs in respect of taxable goods which are sold in the course of interstate trade or commerce. If inputs are purchased within Karnataka and are stock transferred as such or finished goods are manufactured by using the petroleum products and a portions of the finished goods are stock transferred outside the state a special rebating is allowed. Special rebating was allowed only if the applicable KVAT rate of inputs is more than 2%. No Rules have been framed for quantifying the special rebate. The formula as may be applied

Deductible Input tax = Value of stock transfer/ Total sales *Non identifiable Input tax *12.5/14.5 or 3.5/5.5

Non identifiable Input tax means Input tax paid on common inputs used in relation to sale of taxable goods, exempt goods and non taxable transactions like branch transfer. The total sales include non taxable transactions like stock transfer, consumables used, etc. The total input tax credit available when inputs are used in relation to stock transfer of goods and if it is not possible to identify the inputs used in relation to stock transfer

Deductible Input tax credit =Total Input tax- Input tax (partial rebate) - Input tax (Special rebate). If the petroleum products are used as fuel and other inputs the rebate may be calculated on an estimate of consumption.

Partial Rebating Scheme: Section 17 foresees the four situations which may arise in arriving at the correct and exact input tax credit and provides the solutions in mitigating these difficulties. This section also speaks of refund to be made immediately where excess input tax has been paid.

Partial rebate scheme is allowed

a) When a dealer makes sale of taxable and exempt goods
b) or in addition to the above stock transfers the goods outside the state or
c) puts to use the inputs for any other purpose other than sale, manufacturing, processing, packing or storing of goods in addition to use in the course of business
d) and purchases petroleum product for use as fuel in production of any goods or captive power.

Rule 131 prescribes the method of taking partial rebating. Input tax directly relating to sale of exempted goods except when such goods are sold in the course of export is not deductible. All Input tax directly relating to taxable sales fully deductible subject to Input tax restrictions. Input tax relating to both sales of taxable goods as well exempt goods including tax on inputs used for non taxable transactions is not deductible to the extent calculated in formula.

Non deductible input tax =

$$\frac{\text{Sale of exempt goods + non taxable transaction X total input tax}}{\text{Total sales (including non taxable transaction)}}$$

The definition of Total Turnover is amended after 31.03.2007 as follows

Total Turnover less.-

i) The amount paid/payable towards unregistered dealer purchase
ii) Purchase returns out of purchases made from unregistered dealer
iii) Aggregate of sales prices received or receivable in respect of

a. Sale in the course of interstate trade or commerce (E1 sale)
b. Deemed Export sales (Purchase against Form H)
c. Sales in the course of Import (High sea sale)

Section 17 provides for calculation of partial input tax rebate available to dealers either as per the rules prescribed or other special methods approved by the Commissioner. It also provides that any input tax deducted in excess of their eligibility would have to be repaid by the dealers. Rule 131 prescribes a formula that would have to be adopted for calculating the deductible or rebatable portion of the input tax. Rule 131 also empowers the Commissioner to direct any dealer to adopt a special formula, if the formula prescribed does not give the correct amount of deductible input tax.

Method of computation of special rebate and partial rebate as defined under section 14 with section 11 and section 17 of the KVAT Act 2003.

Basically Special rebate is to restrict the input tax credit pertaining to stock transfer and petroleum products. The partial rebate is apportionment of input tax credit pertaining to taxable and non taxable transaction like stock transfer, exempted goods, etc.. Reading the law we have followed the following steps:

1. Computation of total sales which is defined as total turnover as per rule 3(2) and availing the deductions towards URD purchase, URD purchase return, E-1 sale, deemed export and High sea sale. It includes stock transfer, tax collected
2. The stock transfer ratio is computed as stock transfer / total sales
3. The ratio is applied for each kind of purchases like 5%, 5.5%, 14.5 %, petroleum products (14.5%) etc
4. The input tax credit pertaining to stock transfer ratio is bifurcated between eligible and non eligible. For example: 5.5% input tax credit arrived in stock transfer ratio is bifurcated between eligible (3.5%) and non eligible (2%), Even the same formula is applied for 14.5% goods and also petroleum products (14.5%)
5. Then the total ineligible credit (non deductible) and eligible credit (deductible) is arrived.
6. In case there is any petroleum products, Out of the total input tax credit pertaining to petroleum products, the input tax credit apportioned in stock transfer ratio pertaining to petroleum products is deducted and on the balance the ineligible (3 or 3.5 or 12.5%) credit is disallowed as per section 11(a)(6).

Apportionment under partial rebating scheme is to be done each month on provisional basis. True apportionment is to be done in returns filed for the months of September (six months) and march(whole year) where input tax on non taxable transactions is not more than Rs.500 it shall be treated as input tax on taxable sales. Under rule 131(5) commissioner can specify a special formula given in rule 131(3) does not give the correct amount of non deductible input tax. Input tax on capital goods used in relation to sale of taxable goods or goods sold in the course of export and also in relation to exempt goods or goods stock transferred outside the state or non taxable transactions are eligible for partial rebating.

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Goods and Services Tax – Constitution Amendment Bill

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Additional Tax on Supply of Goods

It is proposed that an additional tax be levied on the supply of goods in the course of interstate trade or commerce. The crucial features of this additional tax are as follows:

(a) The tax shall be levied at a rate not exceeding one per cent;
(b) The tax shall be levied only on the supply of goods in the course of interstate trade or commerce;
(c) The tax shall be levied only for a period of two years;
(d) The tax shall be collected by the Government of India;
(e) The tax shall be assigned to the States from where the supply of goods originates; and
(f) Parliament may, by law, formulate principles to determine the State from which the supply of goods originates.

Transitional Provisions

The Amendment Bill also includes a transitional provision. The said provision states that any provision of a law that relates to taxes on goods and services that is in force in any State before the commencement of the Amendment Act, which is inconsistent with the amended provisions of the Constitution, shall continue to be in force until the State Legislature amends the law, or the expiration of one year from the date on which the amendments take effect, whichever is earlier. Therefore, the State Legislatures have been provided with a year's time to amend any State enactment that would be inconsistent with any of the newly amended provisions of the Constitution. Any inconsistent provisions will not be in force after the expiration of one year from the date on which the amendments are brought into effect.

Conclusion

The Government must be lauded for the speed with which they have introduced this 122nd Constitution Amendment Bill. This shows that the Government is serious about rolling out GST by 2016.The Amendment Bill provides many clues regarding the structure of the proposed GST. Of course, there are still many unanswered questions, which can only be answered after drafts of the proposed GST legislations are published. At this stage, one can only hope that this Constitution Amendment Bill is passed at the earliest, and that it does not suffer the same fate as its predecessor.

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Service Tax on Transport of Goods by Road Service and Cenvat Credit

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

In this article we look at the scope of Negative List entry on Transportation of Goods by Road Service. Some of the recent developments in relation to cenvat credit of service tax eligibility are discussed.

Introduction

In the normal course the service provider is liable to service tax. In case of certain specified services, the service receiver is liable to service tax. One such service where the specified service receivers are liable is transport of goods by road service[GTA service].In this article the paper writers have examined when service tax is leviable on GTA service and eligibility of credits of service tax paid on GTA service.

Negative list entry for Transport of Goods by Road Service

Under negative list based taxation, there is an entry which excludes from the service tax levy -

Section 66D(p) services by way of transportation of goods -

(i) by road except the services of-

(A) **a goods transportation agency**; or

(B) a courier agency;

As per above, all services of transport of goods by road except GTA or courier agency is liable to service tax.

Definition of GTA

As per Section 65B(26) goods transport agency means any person who provides service in relation to transport of goods by road and issues a consignment note by whatever name called.

The basic scheme of taxable service category of Goods Transport Agency (GTA service) is that the GTA would be preparing the consignment note and invoice containing details as required.

The consignment note is generally issued as an acknowledgement for the receipt of goods and underwriting to deliver the goods for the person who produces such document. This is in fact considered to be a negotiable instrument also. Therefore this document is coupled with certain obligation and when such obligations are absent there is no requirement of issuing such a document. When such document is not issued, the **person may not be considered as goods transport agency** in terms of the statute.

Explanation to Rule 4B of Service Tax Rules, defines consignment note as follows:

Explanation.- For the purposes of this rule and the second proviso to rule 4A, *"consignment note" means a document, issued by* ***a goods transport agency*** *against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency*.

In other words to attract service tax liability, the service has to be provided by a Goods Transport Agency in relation to transportation of goods by road and a consignment note has to be issued containing all the particulars as set out in explanation to Rule 4B.

Who has to discharge the service tax liability on GTA service?

In respect of GTA service, where the person liable to pay the freight, either himself or through agent, is also liable to pay service tax being one of the following:

a. factory registered or governed under Factories Act,
b. body corporate established by or under any law,
c. society registered under the Societies Registration Act or any other law for time being in force in India,
d. co-operative society established by or under any law,
e. registered dealer of excisable goods,
f. partnership firm registered or not under any law including association of persons.

But when the service receiver is not covered in the specified list, the service provider (GTA) would have to pay service tax. The GTA is therefore liable to discharge tax in case of individual/unregistered firm/HUF/Governmental agency not covered in above list being the receiver of service.

GTA vs GTO

The transport booking agents (including the owners who are acting as such agent) are bought into service tax net and not the truck owners or truck operators, who just provide the service of transportation in direct contract with the service receiver.

This view has found support in a number of decisions, it is decided that the freight amount paid to Goods Transport Operators / Individual Truck Operators are not liable under Goods Transport Operators.

There was a decision in KMB Granites 2010 (19) S.T.R. 437 (Tri. - Chennai)affirmed in 2013 (32) STR J205 (Madras High Court) where Tribunal held that transport undertaken by individuals owning operating lorry and trucks are not liable to Service Tax.

In the case of same party, in another proceeding where there was no representation done, in KMB Granites 2014 (35) S.T.R. 63 (Mad.) where examined whether individual can be commercial concern. The Tribunal Order set aside, holding the individual operator would also be covered in GTA.

They have not looked at the booking agent concept at all. In case of GTA there is agent and in case of GTO [which is not liable to service tax] there is no agent. In its anxiety to tax the GTA services, it seems to have forgotten a fundamental requirement to levy service tax that is GTA is a person who provides service in relation to transport of goods by road **and issues consignment note.** In our view the decision maybe *per incuriam*[some relevant aspects not advanced] and maybe infirmed to that extent as it does not base on established decisions.

GTA on Outward Freight and cenvat credit

The extent to which the assessee can avail cenvat credit on input services is subject to litigation especially on account of the concept of transportation from/to place of removal.

The outward transportation of finished goods **from place of removal** covered by definition of 'input service' upto 31.03.2008. From 01.04.08 the clearance of final products from the place of removal was replaced by clearance of final products **up to the place of removal** in the first limb of the definition. Next we analyse implications of eligibility of ST paid on GTA.

Input service definition – "Means & includes"

The definition of input service as per section 2 (l) of CCR– means any service … used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products AND CLEARANCE OF FINAL PRODUCT upto the place of removal, and INCLUDES services used …… inward transportation of inputs or capital goods and outward transportation upto the place of removal……

GTA services are used for clearance of the final product by the manufacturer. Further the use of the word includes does not disentitle other services. Cenvat being a beneficent scheme [well settled law], credits need to be enabled and not disabled.

We draw strength from the decision of Parth Poly wovens P ltd. 2011-TIOL-891-HC-AHM-ST Gujarat High Court when the definition was "from the place of removal". Further after the definition was changed to "upto the place of removal" a 2014 decision in Ellora Times – 2014 (3) TMI 567 – Again of Gujarat High Court where the High court has rightly stressed that the use of term "includes" makes the entry exhaustive. In both these decisions the High court has rightly said that the use of term "includes" makes the entry exhaustive and does not oust any activity from the main body.

On this reasoning the outward GTA credit was not and is not excludible right from earlier days till date.

Interpretation of From &Upto the Place of Removal

In the input services definition till 1.4.2008, that there was no restriction on availment of the cenvat credit on the outward transportation of finished goods**.** The outward transportation of finished goods **from place of removal** was covered by definition of 'input service' upto 31.03.2008.

From 01.04.08 the clearance of final products from the place of removal was replaced by clearance of final products **up to the place of removal**. Further the **place of removal is site of customer** where **the sale** takes place at the site of the customer. The term 'sale' and' place of removal' is not defined in the CCR. Whenever a term is not defined in CCR, then the relevant definitions to be referred from CE Act.

A new sub-rule (qa) has been inserted in Rule 2 of the Credit Rules to introduce the definition of 'place of removal' as provided under Section 4(3)(c) of the Excise Actdefined as under -

(c) "place of removal" means.

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

ii. a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

[(iii) depot, premises of a consignment agent or any other place or ***premises from where the excisable goods are to be sold after their clearance from the factory****;]*

from where such goods are removed;

Further the definition of 'sale' under Central Excise Act would be relevant. As per Section 2(h) of CE Act "sale" and "purchase", with their grammatical variations and cognate expressions, mean **any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;**

On a conjoint reading of the above definitions of sale and place of removal, that in case of a sale from a depot **or any other premises** (**from where the possession of excisable goods is transferred for consideration by manufacturer,** after their clearance from the factory), the determination of the 'place of removal' would be that location outside the factory. Then it can be inferred that location of customers site where the possession of the goods is handed over for a payment after the clearance from factory and where such sale takes place is the place of removal.

Accordingly, when the factory gate is not the place of removal, then the destination of customer at which the goods are handed over would be treated as the place at which the

transfer of ownership takes place. There could be situations where the sale by the manufacturer / consignor said to have taken place at the destination point because of the terms of the sale contract / agreement for the following reasons:

(i) The ownership of goods and the property in the goods remains with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;

(ii) The seller bears the risk of loss of or damage to the goods during transit to the destination; and

(iii) The freight charges are an integral part of the assessable value of the goods.

Also when as per PO terms, the payment also made at customer site after safe receipt and exam of the goods, the customer site could be said to be place of removal.

This is also supported in the Master Circular issued under Service Tax vide Circular No. 97/8/2007-S.T., dated 23-8-2007, with reference to availability of Cenvat credit on 'outward transportation'.Board vide Circular No. 988/12/2014-CX dated October 20, 2014 has clarified that the place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

Judicial Developments

In Gujarat Ambuja Cement Ltd. 2009-TIOL-110-HC-P&H-ST where assessee availed credit for duty paid on outward freight which was disallowed by revenue. It was held by High Court that assessee is eligible for Credit.

In New Allenberry Works Vs CCE CENVAT - 2014-TIOL-724-CESTAT-DELthe question was whether credit of service tax can be taken for the outward freight in respect of excisable goods delivered at the premises of buyer for period November, 2009 to March, 2010. Held that the **where the place of delivery of the goods is the customer premises and the freight is borne by the manufacturer, the place of removal has to be held as the customer's factory gate in view of Punjab & Haryana HC decision in Gujarat Ambuja Cement Ltd.** The **amendment to definition of 'input service' w.e.f 01.04.2008 would not make any difference where the sales are on FOR basis and there was no reason to deny CENVAT credit** and appeal allowed: DELHI CESTAT.

In Ultratech Cement Ltd. vs. CCE, Raipur, 2014-TIOL-478-CESTAT-DEL, Tribunalruled that in cases where the duty on the final product is levied at a specific rate or on ad-valorem rate but the value determined on the basis of MRP under Section 4A or on tariff value fixed under Section 3 (2), the place of removal would be the factory gate. This judgment was reversed by the Chhattisgarh High Court in Ultratech Cement Ltd. vs. CCE, Raipur reported in 2014-TIOL-1437-HC-CHHATTISGARH-CX**.**

Also in Ultra Tech Cement Ltd. Vs. C.C.Ex. and ST, Rohtak [2014-TIOL-1934-CESTAT-DEL]has again held that Cenvat credit on outward transportation is allowed when the sales are made on FOR destination basis and place of removal would be customer's premises.

The place of removal would depend upon the specific transaction in issue and where the removal is pursuant to sales on FOR basis, with the risk in the goods manufactured being borne by the manufacturer till delivery to the customer at its premises and where the composite value of sales include the value of freight involved in delivery at the customer's premises, the place of removal would not be at the factory gate, but at the customer's premises.

Conclusion

In conclusion,there was no restriction as per law as the word 'includes' in input services definition does not disentitle credit on outward GTA. Further as per PO terms in the case of manufacturer [supported by case laws], where the removal (sale completion) is ONLY at the customers premises therefore such credit on outwards GTA are eligible to be availed.

The manufacturer could opt to take such outwards GTA credits under intimation to department by means of letter and seek confirmation of understanding on eligibility to said credits. Industries & Taxable service providers can avail the credit for the past years if they had either not availed or reversed the GTA credit in past years. Wherever objected by department, reverse under protest. They can avail once again when clarity emerges by way of any definitive decision of Apex Court in this regards.

In this article the paper writers have tried to bring an element of clarity on Service Tax On Transport of Goods by Road Service and Cenvat Credit. In case readers have any specific queries, they may feel free to contact the author on

mhiregange@gmail.com or roopa@hiregange.com

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KSCAA requests the members to generously contribute towards the legal fund and support in its constant endeavour to protect the interests of our profession.

Kindly issue Cheque / DD in favour of "KSCAA" payable at Bengaluru.

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27th KSCAA Annual Conference

Saturday 7th March 2015

08.30 AM Registration

INAGUARAL SESSION

09.15 AM Inaugural Address by Chief Guest

Release of Publications
Release of Souvenir

10.45 AM Inauguration of Exhibition & Tea Break

FIRST TECHNICAL SESSION

11.00 AM Companies Act 2013
- New Compliance Requirement
CA. K. Gururaj Acharya

SECOND TECHNICAL SESSION

12.15 PM Assessment of Charitable Trust
CA. Dr. N. Suresh

01.15 PM Lunch Break

02.15 PM Sponsor's Programme

THIRD TECHNICAL SESSION

02.30 PM Consolidated Financials Statements for Unlisted Companies including Pvt. Ltd. Companies - FY 2014-15
CA. M. P. Vijaykumar, *Chennai*

03.30 PM Tea Break

FOURTH TECHNICAL SESSION

03.45 PM GST - The Way Forward

- Central Excise & Customs
CA. N. Anand, *Advocate*

- VAT
CA. Venkataramani S

- Service Tax
CA. Madhukar N Hiregange

06.45 PM **ENTERTAINMENT PROGRAMME**

08.30 PM Family Dinner

CONFERENCE HIGHLIGHTS

10 CPE Hrs.* Unstructured

Can be claimed on self declaration.
The self declaration form will be available in the Souvenir

- ✔ Highly Useful & interactive technical Sessions of current relevance & importance
- ✔ World class Elite Speakers
- ✔ Great networking opportunities
- ✔ Classic Entertainment
- ✔ Social & Spiritual Sessions
- ✔ Delicious Food & Family Dinner
- ✔ Product and Services Exhibition – featuring top-end consumer brands
- ✔ Publication of useful books of professional interest
- ✔ Souvenir
- ✔ Attractive Memento
- ✔ Gift hampers & much more.

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Vikaas ವಿಕಾಸ್
Expanding Professional Frontiers

27th KSCAA Annual Conference

Sunday 8th March 2015

08.00 AM Breakfast

SPIRITUAL SESSION

09.00 AM Spirituality for Professional Minds
Dr. Aralumallige Parthasarathy
International Celebrity

SPECIAL SESSION

10.00 AM Role of Council Members in ICAI
CA. P.R. Suresh, *RCM*
CA. Cotha S. Srinivas, *RCM*
CA. Nithin Mahadevappa, *RCM*
Moderator :
CA. Nityananda N, *Past CCM*

FIFTH TECHNICAL SESSION

10.45 AM FEMA - Liberalised Scheme, Certification & TDS Issues
CA. Vivek Mallya

11.45 AM Tea Break

SIXTH TECHNICAL SESSION

12.00 Noon Controversies in Domestic TDS Issues
CA. Padamchand Khincha

01.15 PM Lunch Break

02.15 PM Sponsor's Programme

SEVENTH TECHNICAL SESSION

02.30 PM Opportunities in Arbitration & Conciliation
Sri K.G. Raghavan, *Advocate*

03.30 PM Tea Break

EIGHTH TECHNICAL SESSION

03.45 PM Union Budget Proposals - Panel Discussion

Direct Tax
CA. Vishnumurthy S
CA. Prashanth G.S

Indirect Tax
CA. Vishnumoorthi H
CA. Rajeshkumar T.R

Moderator:
CA. S. Rama Subramanian

05.45 PM **VALEDICTORY SESSION**

This Conference will immensely benefit • Chartered Accountants • Company Secretaries • Tax Practitioners • Advocates • Accounting Professionals • Finance Consultants, Analysts, Advisors • CEO's, CFO's & Executives of Industry • CA Students • Others

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