KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION
KNOWLEDGE IS STRENGTH

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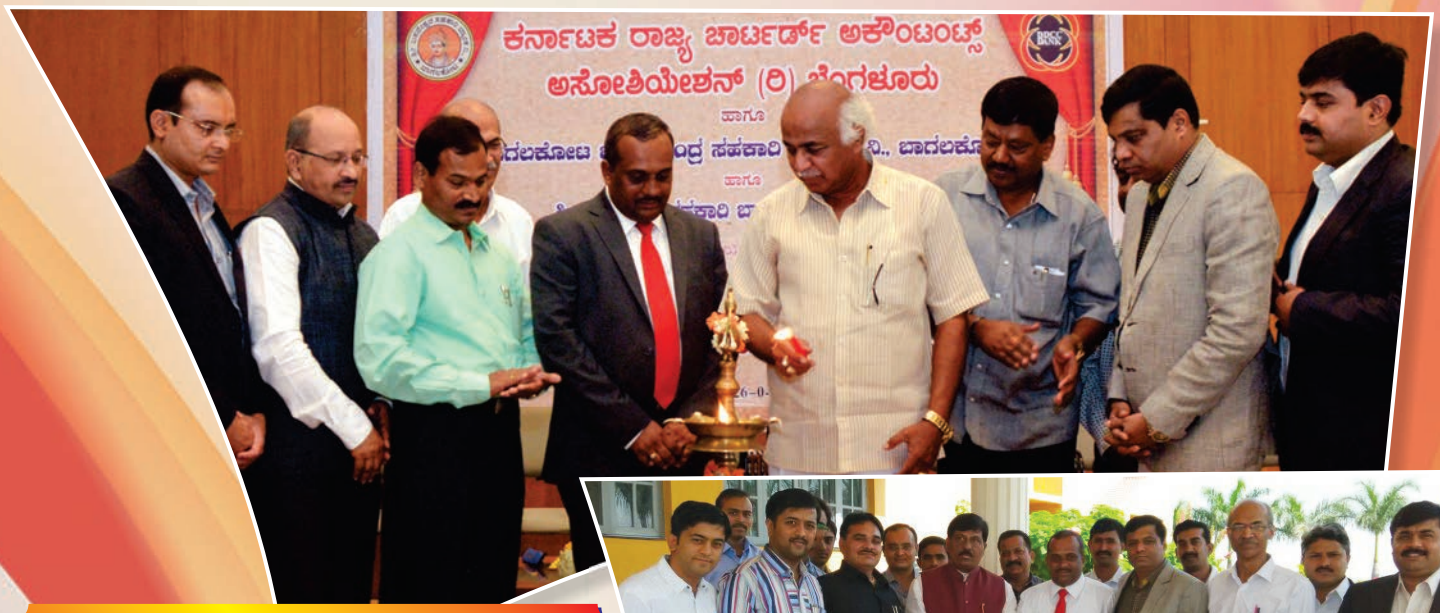
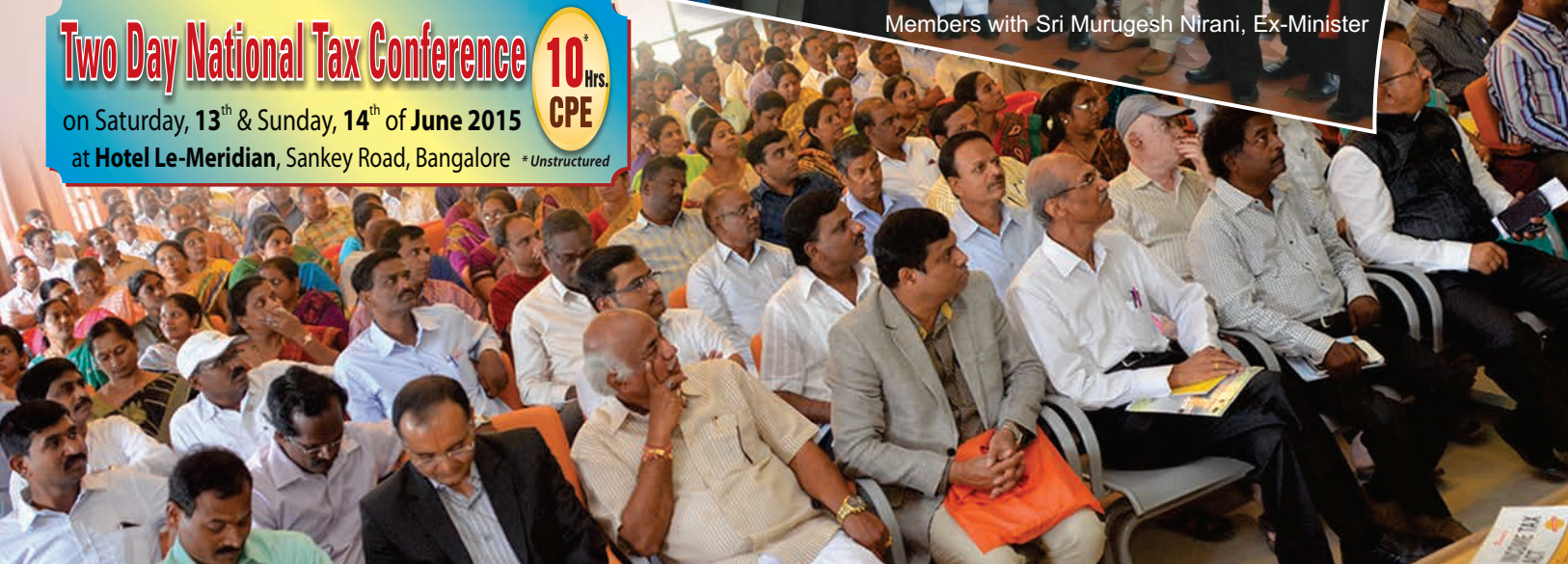
Sri Prakash Tapashetti Inaugurating the One Day Seminar on 'Co-operative Bank - Income Tax and Audit Compliances', held on 26th April 2015 at Bagalkot.



Members with Sri Murugesh Nirani, Ex-Minister

Workshop on
ISSUES ON FCRA
on Monday, **25th May 2015**
at **Cabinet Hall,** FKCCI, K G Road, Bangalore

Two Day National Tax Conference
10* Hrs. CPE
on Saturday, **13th** & Sunday, **14th** of **June 2015**
at **Hotel Le-Meridian**, Sankey Road, Bangalore *Unstructured



From the President

ಬುದ್ಧಿಗೇಡಿಗಳು ತಮ್ಮ ದುಃಸ್ಥಿತಿಗೆ ಇತರರನ್ನು ದೂರುತ್ತಾರೆ. ದುರದೃಷ್ಟಕ್ಕೆ ಅಂಥವರ ಸಂಖ್ಯೆ ಹೆಚ್ಚುತ್ತಿದೆ. ಅವರು ಸ್ವಯಂಕೃತಾಪರಾಧದಿಂದ, ಎಂದರೆ, ತಾವು ಮಾಡಿದ ತಪ್ಪಿನಿಂದಾಗಿ ತಮ್ಮನ್ನು ತಾವೇ ದುರ್ಗತಿಗೆ ಈಡುಮಾಡಿಕೊಂಡಿದ್ದರೂ ಇತರರ ಮೇಲೆ ದೂರು ಹೇಳಲು ಮುಂದಾಗುತ್ತಾರೆ. ಇದರಿಂದ ಸತ್ಯಸ್ಥಿತಿಯೇನೂ ಬದಲಾಗುವುದಿಲ್ಲ. ಅಲ್ಲದೆ ಹಾಗೆ ದೂರಿದ್ದರಿಂದ ಪ್ರಯೋಜನವೂ ಇಲ್ಲ. ಆದರೆ, ಈ ರೀತಿಯಾಗಿ ಇತರರನ್ನು ದೂರುತ್ತ ದೂರುತ್ತ ತಾವೇ ಹೆಚ್ಚು ದುರ್ಬಲರಾಗುತ್ತಾರೆ.

– ಸ್ವಾಮಿ ವಿವೇಕಾನಂದ

Dear Professional Colleagues,

We had an overwhelming response to our Association's joint seminar at Bagalkot on 'Co-operative Bank - Income tax and Audit compliances' held on 26th April 2015. This was the First Program organised by KSCAA at Bagalkot. It was a proud feeling to stand as a President of KSCAA before delegates of my home district. It received a great applause and appreciated by all. More than 300 delegates participated from Bagalkot, Vijayapura, Gadag, Koppal, Belagavi and nearby districts. We thank the President, Committee Members and staff of Bagalkot Central Co-operative Bank, Shri Basaveshwara Co-operative Bank and Bagalkot District CA Association for the success of this one day Program. We thank Sri Prakash Tapashetti, President of Shri Basaveshwara Co-operative Bank for inaugurating the seminar & rendering inaugural address. We offer special thanks to CA. D R Venkatesh & Seminar Co-ordinator CA. Kumar S.Jigajinni for the wonderful co-ordination of the seminar. These kind of success encourage us to conduct more programs at Moffusil areas on varied topics.

Nepal Earthquake

Massive 7.9 magnitude earthquake hit Nepal with devastating force less than 50 miles from the capital, Kathmandu causing tremors in northern India as well killing thousands in Nepal and India on 25 April. Exemplary work by our government and armed forces in a prompt and purposeful action towards the aid of the victims of Nepal earthquake. Till the requirements of rehabilitation are established, I urge all members to generously contribute to the PM Relief Fund. At this hour, prayers of a billion Indians are with the people of Nepal and others effected in the disaster.

Pradhan Mantri Suraksha Bima Yojna

Prime Minister Narendra Modi launched the flagship social security schemes, including Rs. 2 lakh accident cover at a premium of just Re 1 per month on 9th May 2015. These schemes are aimed at providing affordable universal access to essential social security protection in a convenient manner linked to auto-debit facility from the savings bank account of the subscriber. The two insurance schemes -- Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) -- would provide insurance cover in the unfortunate event of death by any cause, death or disability due to an accident, whereas the pension scheme -- Atal Pension Yojana (APY) - would address old age income security needs.

Companies Act – CARO 2015

The Ministry of Corporate affairs (MCA) has notified the Companies (Auditors Report) Order, 2015 under section 143 (11) of the Companies Act 2013. As per the notification, the CARO 2003 has been omitted and CARO 2015 shall apply to all financial years commencing on or after 1st April 2014. The issue of CARO 2015 is a welcome step as auditors are gearing up to report the financial statements for the year ended 31st March 2015.

GST

The Goods and Service Tax (GST) bill was passed by Lok Sabha Last week and is expected to be discussed in the Upper House of the Parliament soon. The GST – hailed by the Finance Minister Mr. Arun Jaitley as the biggest tax reform since independence – which the government wants to roll out by April 2016.

Co-operative Societies Auditors

As per the draft rules, rule 29B is proposed to be amended to include Department Officials also at par with CAs to audit A and B group Societies. We are planning to submit a memorandum mentioning audit is an exclusive domain of Chartered Accountants and non-Chartered Accountants should be excluded from the panel of auditors and we also urge the Government to continue with the present status in this regard.

Representations

We have submitted a representation to the Chief Commissioner of Income Tax, Panaji, Goa region which also covers the Belagavi and Vijayapura CIT regarding disallowance made by Assessing officers on the decided issues u/s 80P (2)(a)(i).

KSCAA Programs

KSCAA is organising a joint program with FKCCI on the Issues on FCRA on 25th May 2015 at Cabinet Hall, FKCCI, Bengaluru. The workshop is open for public and we welcome you to participate in the event. The details are presented elsewhere in the bulletin.

KSCAA is organising a two days National Tax Conference jointly with All India Federation of Tax Practitioners (AIFTP) and Bangalore Branch of SIRC ICAI on 13th & 14th June 2015 at Hotel Le-Meridian, Bangalore. We welcome you to participate in the event. The details are presented elsewhere in the bulletin.

With the rejoice of Bagalkot programme, we are planning to hold Seminar on Co-operative Banks - Income Tax and Audit Compliances at Dharwad on Sunday, 21st June 2015 jointly with Karnataka Central Co-operative Bank Ltd., Dharwad and Mahalaxmi Co-operative Bank Ltd. Dharwad. Details of the programme will be intimated in due course.

In service of the Profession,

CA. Raveendra S. Kore
President

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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

Karnataka State Chartered Accountants Association (R)

Organizes

Workshop on Issues on FCRA

Jointly with

Federation of Karnataka Chambers of Commerce and Industry (FKCCI)

On Monday, 25th May 2015

At Cabinet Hall,

FKCCI, K G Road, Next to SBM Head Office, Bengaluru-560009.

No Delegate Fee

Objective of the workshop:

The Home Ministry has recently cancelled registration of large number of trusts and other charitable organizations for violation of FCRA. Large NPO like Ford Foundation & Green Peace foundation are also under scrutiny. The meeting will discuss various issues covering the above.

Agenda of the Workshop :	*For Details Contact:*
4.30 pm : High Tea	**CA. Raveendra S. Kore** **President, KSCAA, Mob: 9902046884**
5.00 pm : Issues on Foreign Contribution Regulation Act (FCRA) **-Dr.CA. N.Suresh,** Chartered Accountant	**CA. N. Nityananda** **Chairman-Banking & ADR Committee, FKCCI, Mob: 9343622328**

Media Coverage

One Day Seminar held on 26th April 2015 at Bagalkot

ವಿಜಯವಾಣಿ
ಕನ್ನಡಿಗರ ಧ್ವನಿ

29.04.2015

ಸಹಕಾರಿ ಬ್ಯಾಂಕಿಂಗ್‌ಗೆ ಧಕ್ಕೆ

■ ಬಾಗಲಕೋಟೆಯಲ್ಲಿ ಆದಾಯ ಕರ, ಆಡಿಟ್ ಕಾರ್ಯಾಗಾರ ■ ತಪಶೆಟ್ಟಿ ಆತಂಕ

ಬಾಗಲಕೋಟೆಯ ಜಿಲ್ಲಾ ಕೇಂದ್ರ ಸಹಕಾರಿ ಬ್ಯಾಂಕ್ ಸಭಾ ಭವನದಲ್ಲಿ ನಡೆದ ಸಹಕಾರಿ ಬ್ಯಾಂಕುಗಳಿಗೆ ಆದಾಯ ಕರ, ಆಡಿಟ್ ಕುರಿತ ಕಾರ್ಯಾಗಾರವನ್ನು ಪ್ರಕಾಶ ತಪಶೆಟ್ಟಿ ಉದ್ಘಾಟಿಸಿದರು.

ಬಾಗಲಕೋಟೆ: ದೇಶದ ಆರ್ಥಿಕ ಕ್ಷೇತ್ರದಲ್ಲಿ ಪ್ರಮುಖ ಪಾತ್ರ ವಹಿಸಿರುವ ಸಹಕಾರಿ ಬ್ಯಾಂಕಿಂಗ್ ವ್ಯವಸ್ಥೆಗೆ ಆದಾಯ ಕರದ ಈಚಿನ ಬೆಳವಣಿಗೆಗಳು ತೀರಾ ಧಕ್ಕೆ ತರುವಂತವುಗಳಾಗಿವೆ ಎಂದು ಬಸವೇಶ್ವರ ಬ್ಯಾಂಕಿನ ಅಧ್ಯಕ್ಷ ಪ್ರಕಾಶ ತಪಶೆಟ್ಟಿ ಆತಂಕ ವ್ಯಕ್ತಪಡಿಸಿದರು.

ರಾಜ್ಯ ಚಾರ್ಟರ್ಡ್ ಅಕೌಂಟೆಂಟ್ಸ್ ಅಸೋಸಿಯೇಶನ್, ಜಿಲ್ಲಾ ಕೇಂದ್ರ ಸಹಕಾರಿ ಬ್ಯಾಂಕ್ ಹಾಗೂ ಬಸವೇಶ್ವರ ಬ್ಯಾಂಕಿನ ಸಂಯುಕ್ತ ಆಶ್ರಯದಲ್ಲಿ ಡಿಸಿಸಿ ಬ್ಯಾಂಕ್ ಸಭಾ ಭವನದಲ್ಲಿ ನಡೆದ ಸಹಕಾರಿ ಬ್ಯಾಂಕುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ ಆದಾಯ ಕರ, ಆಡಿಟ್ ಕುರಿತ ಕಾರ್ಯಾಗಾರ ಉದ್ಘಾಟಿಸಿ ಅವರು ಮಾತನಾಡಿದರು.

ಹಿಂದಿನ ವರ್ಷಗಳ ಸದಸ್ಯರ, ಗ್ರಾಹಕರ ಠೇವಣಿ ಬಡ್ಡಿಯ ಮೇಲೆ ಬ್ಯಾಂಕ್ ಆದಾಯ ಕರ ಮುರಿದುಕೊಳ್ಳದಿದ್ದರೂ ಈಗ ಕಟ್ಟಿ ಎಂದರೆ ಕಟ್ಟುವುದಾದರೂ ಹೇಗೆ? ಎಂದ ಅವರು, ರಾಷ್ಟ್ರೀಕೃತ ಬ್ಯಾಂಕ್‌ಗಳಿಗಿಂತ ಸಹಕಾರಿ ಬ್ಯಾಂಕ್‌ಗಳು ಹೇಗೆ ಸಮಸ್ಯೆಗಳನ್ನು ಎದುರಿಸುತ್ತಿದೆ ಎಂಬ ಅಂಶಗಳನ್ನು ಎಳೆ ಎಳೆಯಾಗಿ ಬಿಚ್ಚಿಟ್ಟರು. ಈ ರೀತಿಯ ಹಲವು ಅಸಂಬದ್ಧ ಬೆಳವಣಿಗೆ ಬಗ್ಗೆ ಸರ್ಕಾರ ಹಾಗೂ ರಿಜರ್ವ್ ಬ್ಯಾಂಕ್ ನವರಿಗೆ ಮನವರಿಕೆ ಮಾಡಿಕೊಟ್ಟು ಈ ಸಮಸ್ಯೆಗಳಿಗೆ ಪರಿಹಾರ ಕಂಡುಕೊಳ್ಳಬೇಕಿದೆ ಎಂದು ಚಾರ್ಟರ್ಡ್ ಅಕೌಂಟೆಂಟ್ಸ್ ಅಸೋಸಿಯೇಶನ್‌ನವರಿಗೆ ಸಲಹೆ ನೀಡಿದರು.

ಕರ್ನಾಟಕ ಚಾರ್ಟರ್ಡ್ ಅಕೌಂಟೆಂಟ್ಸ್ ಅಸೋಸಿಯೇಶನ್ ಅಧ್ಯಕ್ಷ ರವೀಂದ್ರ ಕೋರೆ, ಕಾರ್ಯಾಗಾರದ ಪ್ರಯೋಜನವನ್ನು ಪಡೆದುಕೊಳ್ಳುವಂತೆ ಮನವಿ ಮಾಡಿದರು.

ಸಹಕಾರಿ ಬ್ಯಾಂಕಿಂಗ್ ವ್ಯವಸ್ಥೆಯು ಆದಾಯ ಕರದಿಂದ ಎದುರಿಸುತ್ತಿರುವ ಸಮಸ್ಯೆಗಳ ಕುರಿತು ಸರ್ಕಾರದ ಗಮನ ಸೆಳೆಯಲು ಅಸೋಸಿಯೇಶನ್ ಈಗಾಗಲೇ ಪ್ರಯತ್ನ ನಡೆಸಿದೆ.

| ಡಿ.ಆರ್. ವೆಂಕಟೇಶ,
ಚಾರ್ಟರ್ಡ್ ಅಕೌಂಟೆಂಟ್

ಸಹಕಾರಿ ಸಂಘಗಳ ಸಂಯುಕ್ತ ನಿಬಂಧಕ ಎಚ್. ವೈ. ಗದ್ದನಕೇರಿ, ರಾಜ್ಯ ಉಪಾಧ್ಯಕ್ಷ ದಿಲೀಪಕುಮಾರ, ಕಾರ್ಯದರ್ಶಿ ರಾಘವೇಂದ್ರ ಪುರಾಣಿಕ, ಜಿಲ್ಲಾ ಘಟಕದ ಅಧ್ಯಕ್ಷ ಶಿವಾರಾಮ ಹೆಗಡೆ ವೇದಿಕೆಯಲ್ಲಿ ಉಪಸ್ಥಿತರಿದ್ದರು.

ಕಾರ್ಯಾಗಾರದಲ್ಲಿ ರವೀಂದ್ರನಾಥ ಬಿ.ವಿ ಮತ್ತು ಶಿವಕುಮಾರ ಎಚ್. ಉಪನ್ಯಾಸ ನೀಡಿದರು. ಬಸವೇಶ್ವರ ಬ್ಯಾಂಕಿನ ನಿರ್ದೇಶಕರಾದ ರಂಗನಗೌಡ ದಂಡಣ್ಣವರ, ಎಸ್.ಸಿ. ನಂದಿಕೋಲಮಠ, ಎಂ.ಎಸ್. ಏಳಮ್ಟಿ, ಎಂ.ಎಸ್. ಜೋಳದ, ವಿ.ವಿ. ಶಿರಗಣ್ಣವರ, ಅಧಿಕಾರಿಗಳಾದ ಬಿ.ಪಿ. ಬಣಗಾರ, ಎಸ್.ಬಿ. ಬಾದಾಮಿ ಇದ್ದರು.

ಕಾರ್ಯಾಗಾರದಲ್ಲಿ ಬೆಳಗಾವಿ, ಗದಗ, ಕೊಪ್ಪಳ, ಬಾಗಲಕೋಟೆ, ವಿಜಯಪುರ ಜಿಲ್ಲೆಗಳ ಸಹಕಾರಿ ಬ್ಯಾಂಕುಗಳ ಅಧ್ಯಕ್ಷರು, ಉಪಾಧ್ಯಕ್ಷರು, ನಿರ್ದೇಶಕರು, ಅಧಿಕಾರಿಗಳು ಪಾಲ್ಗೊಂಡಿದ್ದರು. ರತ್ನಾ ಚೊಳಚಗುಡ್ಡ ಪ್ರಾರ್ಥಿಸಿದರು. ಬಸವರಾಜ ನಾವಲಗಿ ಸ್ವಾಗತಿಸಿದರು. ಮಹಾಬಲೇಶ್ವರ ಗುಡಗುಂಟಿ ನಿರೂಪಿಸಿದರು. ಗೋಪಾಲ ಮೂಲಪಾಣಿ ವಂದಿಸಿದರು.

Charitable Institutions "Not For Profit" Explained

CA. S. Krishnaswamy

1. The issue of Charitable Institution generating a surplus has been the subject manner of judicial controversy – if huge surpluses are made do they lose the character of "not for profit" institution. Ordinarily understood institutions in the field of relief of the poor, education and medical relief plough back surpluses if any to the needs of the institution and since the benefits do not accrue to the Trustees (prohibition in section 13 of the Income Tax Act). 'Not for profit' must be understood in a broad sense that the surplus will benefit the institution only and hence not for private profit. When a Charitable Institution applies for exemption order u/s 10(23C) or u/s 12A approval/registration is denied on the ground that the institution is making a huge surplus. It is rejected applying the decision of Karnataka High Court in Visweswarya Tech University VS ASST CIT (Kar) (2014) 362 ITR 279(Kar). There are two stages when the issue may be considered. At the time of granting exemption/registration or at the time of assessment. A preponderant judicial opinion is that at the time of (approval/registration the application for exemption u/s 10(23C) or registration u/s 12A the authority should confine itself to the determination of the character of the institution and leave the other issues for examination at the time of assessment.

Two important decisions may now be cited.

2. (1). Council for the Indian School Certificate Examination VS Director General of Income Tax (2014) 364 ITR (Delhi).

The facts are;

"The assessee-society was engaged in ensuring high standards of education imparted through the medium of schools. It had 1750 schools which were affiliated to it and provide education from nursery to twelfth standard. It selected the courses, syllabus, books and literature for different standards to be studied by the students in order to maintain a uniform standard throughout India. It was recognized and listed as a body conducting public examinations under the Delhi School Education Act, 1973. It conducted examinations (ICSE and ISC) of the students who had completed their studies and awarded certificates to the successful students. The assessee, in order to maintain the standard of education and to make the teachers aware of the latest development in the education field, from time to time, undertook, supported and promoted study and research and also held training conferences and seminars for teachers. The assessee owed its genesis to the Inter-State Board for Anglo Indian Education which was set up in 1935. The Board looked after the work and standard of Anglo Indian Schools preparing the students for "Overseas School Certificate" examination conducted by the University of Cambridge. In 1958, the Inter-State Board for Anglo Indian Education set up a council for the Indian School Certificate Examinations and on December 19, 1967, the council was registered as a society under the Societies Registration Act, 1860 (Punjab Amendment) Act, 1957 as extended to the Union Territory of Delhi. Approval under section 10(23C)(vi) was denied to the assessee because of huge surpluses.

i. The prescribed authority concluded that the activities of the assessee were in the nature of business and for the purposes of generating profit and that the assessee did not qualify as existing only for the purpose of the education and not for profit.;

ii. That the fact the assessee had generated certain profits would not dilute the purposes for which the assessee had been established, the activity carried on by the assessee was solely in the field of education. There was no distribution of the surplus accumulated by the assessee. A provision of service in the nature of charity would not cease to be charitable only because it entails receiving a charge for the service. The nature of the activity carried on by an entity would be the predominant factor to determine whether the purpose of the organisation is charitable activity entails giving or providing a service and receiving nothing in return. Collection of a charge for providing education would, none the less, be charitable provided the funds collected are also utilised for the presentation of the charitable organisation or for furtherance of its objects.

The assessee had provided an explanation for the surpluses being accumulated. If the surpluses had been generated for the purposes of modernising the activities and building of the necessary infrastructure to serve the object of the organisation, it would be erroneous to construe that the generation of surpluses had in any manner negated or diluted the object of the organisation. The assessee had been existing solely for educational purposes. Generation of profit and its distribution was not the object of the assessee. The fact that surpluses had been generated to build the infrastructure for modernising the operation was clearly in the nature of furthering the objects of the society rather than diluting them. The conclusion of the prescribed authority that the increase in the fees for generating surplus would by itself exclude the assessee from the ambit of section 10(23C)(vi) was clearly erroneous. Generation of profit and surplus by an organization is generation of profit/surplus, as long as the surpluses generated are accumulated /utilized only for educational purposes. The same would not disable the assessee from claiming exemption under section 10(23C)(vi). Thus, the conclusion of the prescribed authority that the assessee was not entitled to exemption under section 10(23)(vi) since it had generated a surplus was not sustainable".

(2). Queens Educational Society V CIT (2015) 372 ITR

699(SC) – Issue u/s 10(23C)(vi) reversing the High Court decision in (2009) 319ITR (Uttarakhand) the SC held.

i. The apex Court analysed the section particularly in the context of surplus generated. There is nothing like a reasonable surplus trust of say 10% to 15% as held in the Karnataka High Court case cited supra and held at page 716 – para 11

"The law common to sub-clause (iiiad) and of section 10(23) of the Income Tax Act, 1961, may be summed up as follows:

1. Where an educational institution carries on the activity of education primarily for educating persons, the facts that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.
2. The predominant object test must be applied – the purpose of education should not be submerged by a profit-making motive.
3. A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit; it becomes an activity for profit.
4. If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes.
5. The ultimate test is whether on an overall view of the matter in the assessment year in question the object is to make profit as opposed to educating persons. These tests would all apply to determine whether an educational institution exists solely for educational purposes and not for profit.

"The thirteenth proviso to section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and examination must forthwith be withdrawn".

"Held, affirming the order of the Tribunal, that the final conclusion of the High Court that if a surplus is made by an educational society and ploughed back to construct its own premises, it would fall foul of section 10(23C) was to ignore the language of the section and to ignore the tests laid down by the Supreme Court in Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC), Aditanar Educational Institution [1997] 224 ITR 310 (SC) and American Hotel and Lodging Association Educational Institution [2008] 301 ITR 86 (SC)".

3. The Karnataka High Court in Visveswaraya Tech University V ASST CIT (Kar)-(2014) 362 ITR 279(kar) largely addressed the issue from the point of huge surplus generated; that any surplus in excess of 10 to 15% was excessive @ p 295 is discussed what constitute 'not for profit". Quoting SC decision in Additional CIT V Surat Art Silk(1980) 121 ITR 1 (SC) – the test that must be applied is not "where as a matter of fact an activity results in profits" but " whether the activity is carried on with the object of earning profit". The High Court then introduced @ p 290 a test of reasonableness of 'surplus' that ultimately was decisive.

4. Another decision which took a similar decision like Karnataka High Court is in M/s Yash society, V CCIT – 12th March, 2015 (Bang) where the court held – in a matter of approval u/s 10(23C) (via) of the Income Tax Act.

"The present petition was filed against the impugned order rejecting the petitioner's (hospital) application for grant of approval under section 10(23C)(via) of the Income Tax Act, 1961 (Act) for A.Y. 2009-10 on the ground that the primary requirement of Section 10(23C) that the petitioner was established for philanthropic purposes did not get fulfilled as found evident from the creation of capital assets from the surplus funds. It was the case of Revenue that during the relevant assessment years, there was a significant increase in asset base along with generation of surplus showing systematic generation of profit from the activities of the trust and the increase in assets helped the petitioner to generate more income and profits.

Section 10(23C) provides for a twin test: firstly, the purpose for which the trust is existing, which should be solely an existence for a philanthropic purpose and secondly it should not be for profit.

In the instant case, it was undisputed that the petitioner was earning surplus revenue from its activities and that the assets were increasing. This surplus revenue was utilized for acquisition of assets which was capable of generating more income".

5. In "Vanita Vishram Trust Vs Chief Commissioner of Income Tax and Another (2010) 327 ITR 121 (Bom), the court held "the fact that a surplus may incidentally arise from the activities of the trust, after meeting the expenditure incurred for conducting educational activities would not disentitle the trust of the benefits of the provisions of section 10(23C). The third proviso to section 10(23C) would establish that Parliament did not regard the accumulation of income by a University or educational institution governed by sub-clause (vi) as a disabling factor, so long as the purpose of accumulation is the application of the income wholly and exclusively to the objects for which the institution has been established. Parliament has, how-ever, prescribed that where more than fifteen percent of the income is accumulated after April 1, 2002, the exceeding fifteen percent shall not be accumulated for a period in excess of five years".

Conclusion;

The Apex Court has set down the guidelines that what is important is the dominate object and making a surplus which is retained/invested as provided in the act for the benefit of the institution cannot result in denial of registration – approval or exemption.

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Indirect Tax Applicability to Software Industry

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In this article the paperwriters have sought to examine the various kinds of software transactions and indirect taxes implications. Inspite of earning billions in CFE, the bane of the software industry in India in addition to no / part or delayed refund,has been imposition of multiple levies which has lead to double taxation especially with VAT and service tax being levied on same base amount.However all transactions are not liable for both ST and VAT.

Background

The aspect of ascertaining the applicability of indirect taxes under Central Excise, Customs, VAT or Service Tax is important.Before getting into the aspect of ascertaining the taxation, one has to firstly understand whether software is goods?

The Hon'ble Supreme Court in Tata Consultancy Services Vs State Of Andhra Pradesh 2004 (178) ELT 0022 (S.C.), held that Computer software **in canned form or of the shelf software does** have the attributes of having utility, capable of being bought and sold, capable of being transmitted, transferred, delivered, stored and possessed, which are the attributes of goods and thus it is goods is in its marketable form. From the said decision it is now well settled that **'software' is goods**. In the case of Infosys Technologies Ltd., Vs. CCE 2009 (233) ELT 56 (Mad), held that even customized software is goods.

The High Court in ISODA case(2010 (020) STR 0289 Mad)upheld the constitutional validity of service tax on Information technology software service stating that not in all the cases of software related transaction there is sale. There may be also service element, what is intended to be taxed on the services involved in the transaction. It further said whether the transaction to be treated as Sale or Service has to be decided on a case to case basis based on terms and conditions between parties.

Central Excise and Customs on Software

Software on a CD or any other media is covered under the Central Excise Tariff Act, under the chapter heading (hereinafter referred as heading) 8523. The Chapter Notes to Chapter 85 read with the section 2(f)(ii) of the Central Excise Act, the activity of recording any phenomenon on a media would be deemed manufacture. Even reproduction of developed software into number of CDs would also be considered as deemed activity of manufacture.

Excise duty is applicable on packaged software at 12.5%. Customised software is exempted from excise duty vide notification 12/12-CE.

When software is imported on a media it is treated as goods and import duties applicable to same. BCD is free, CVD[equal to excise duty on like goods manufactured in India] is 12.5% for packaged software and nil for customized software.SAD is nil for Information technology software, other than that on floppy disc or cartridge tape vide notification 21/12-Cus. When BCD and CVD is nil, SAD is also nil vide notification 21/12-Cus for customized software. SAD is also nil for all pre-packaged goods intended for retail sale in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article. If it is required to declare RSP onpre-packaged goods[on software] intended for retail sale as per Legal Metrology Act, then SAD is exempted.

Service Tax

Under negative list based taxation, service tax is levied on all services other than those mentioned in negative list or a subject matter of exemption.The definition of service covers any activity done by one person to another for consideration. The term service is defined to include declared services. This has covered specified services relating to information technology software. Also covers temporary transfer of any intellectual property right as a service. Service tax rate is 12.36%.

Levy of VAT on software

In order to constitute a sale liable to VAT, tax there should be transfer of property in goods from one person to another for cash, deferred payment or other valuable consideration. By valuable consideration we mean something which could be measured in terms of money. The VAT is imposed as per rates set out in Section 4(1)(a) and (b) given in Schedules to Act.

On a perusal of schedule 3 of KVAT Act 2003, it sets out Exim scrips, ……..**copyrights**,patents and the like including software licenses by whatever name called. The applicable rate is 5.5%.

VAT vs Service tax on software

Where there is a program sold on media **without reservation** [source code etc also transferred] then it is plain and simple sale with no service being involved. Not liable to service tax. Once software is goods, transfer of right to use the same for consideration should be subject matter of VAT going by Article 366(29A) of Constitution of India.

The deemed sale entry covers transfer of right to use goods. In many cases the copyright or the intellectual property right

relating to the software sold continue to vest with the seller. This does not affect the nature of the transaction from being a sale for the purposes of the VAT Act, though it should.

The same transaction could also be taxable to service tax, under another declared services entry of transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods if the developer is merely permitting to use the software [which is goods] subject to conditions and restrictions as to its usage/replication imposed in this regards.

Where there is no involvement of transfer of right to use, then there may not be transfer of title in goods nor a deemed sale of goods. There must be a transfer of right to use any goods and when the goods as such is not transferred, the question of deeming sale of goods does not arise and the transaction would be only a service and not a sale.

There is a finer distinction between the applicability of VATand service tax. In the case of VATthere would be "transfer of Right to Use the Goods". Whereas under the service Tax, what is levied is "temporary transfer/enjoyment of the goods".

Again taking conservative view most people in software industry, are charging both VAT and Service Tax usually where software is given by means of a license.

Indirect Taxes on Models prevalent in software industry

The industry has the following types of transactions:

a. **Canned or off the shelf software:** Development, upgradation, etc., done before release is for oneself. This can be construed only as sale of goods liable to sales tax. Where a master is copied, the duplication has been considered to be manufacture. Therefore liable for excise duty @ 12.5%[if off the shelf packaged software]. If imported same impact.

b. **Customised Software**: When one sells customised software to the customer as per their needs it is a sale liable to VAT. It is also subjected to service tax. Not liable to Excise duty. If software developed by seller then not liable for service tax also as it is a "literary work"".

c. **Electronic download**: The software are not given on media CD or in hard form, instead it is permitted to be downloaded from internet and license is provided separately to use it, here it is considered as service. The VAT authorities are contending that 'right to use goods' comes within the ambit of deemed sale definition, taxed under sales tax. At present there is double taxation, with both VAT/sales tax and Service Tax being charged.

d. **Sale of licenses**: This is a deemed sale of right to use the software liable for sales tax. It could also be liable to service tax.

e. **Customisation on software owned by customer:** This is working on the program owned by the client where the property of the developed program is always the property of the customer. VAT/ Sales tax is not payable on same. Service tax liable.

f. **Software developed as per customer specification**: The customer gives specifications and company develops to the needs of the customer. Since the company does not retain rights and completely given to the customer with source and object codes, there is no service, it is only sale of goods subject matter of only sales tax.

g. **Software works contract- Option 1- IPR with Developer:** Customer is intending to develop the software wherein they seek services of software company to develop on continuous consultation with the customer, where the original software belongs to the customer. In this process the Intellectual Property of the final product may go to the customer, but the intermediate programs would be that of software company, which can be used by them for other developments. This involves providing of both services as well as goods (as firstly the property in software developed comes to developmentcompany and later transfers to that extent to the customer. In addition to this they also provide services of incorporation, implementation etc.,). This could be considered as works contract under sales tax and service tax department is treating it as service. Both sales tax and service tax is being paid by the industry in this case as well.

h. **Option- 2- IPR with Customer:** Similar to the previous one, except that all the intellectual property in all the work would belong to the customers and in no part it would become the property of the service provider. As and when codes generated they belong to the customer. This is merely a service of software development provided to the customer and therefore it is subject matter of only service tax. However it should be appropriately supported by documents to mitigate the local VAT authorities queries.

i. **Software Consultancy:** The customer engages professional as consultants, developers who would work only under supervision or control of the customer with no responsibility on them to deliver any specific software work. It is only service liable to service tax.

IDT implications of various revenue models

1. **Access of Software on Subscription basis**: When access to software is given, without any license to use, only liable to service tax under Information technology software services and there maybe no VAT liability.

2. **Software patches**: As a part of upgradation or AMC, any further software patches are provided, then as also involving sale of goods by sales tax authorities. Therefore the same would be subject matter of sales tax as well in addition to service tax.

(Contd. on page 16)

Indirect Taxes Update – April 2015

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A. NOTIFICATIONS AND CIRCULARS

SERVICE TAX

a) Notification No. 10-11/2015-ST dt. 8.4.2015 provide exemption to taxable services provided to the holder of Merchandise Exports from India Scheme duty credit and holder of Service Exports from India Scheme duty credit scrip, issued by DGFT in terms of the Foreign Trade Policy 2015.

b) Notification No. 12/2015-ST dt. 30.04.2015 exempts following services from service tax:

   a. Services of General insurance business provided under Pradhan Mantri Suraksha Bima Yojna [Sl No. 26 of Notification No.25/2012-ST dt. 20.06.2012]

   b. Services of Life insurance business provided under Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Jan Dhan Yojana [Sl No. 26A of Notification No.25/2012-ST dt. 20.06.2012]

   c. Services by way of collection of contribution under Atal Pension Yojana (APY) [Sl No. 26A of Notification No.25/2012-ST dt. 20.06.2012]

CENVAT CREDIT RULES

Utilisation of Cess for payment of duty

c) Rule 3(7) of Cenvat Credit Rules has been amended to provide for utilisation of credit of Education cess and Higher Education cess availed on inputs, input services or capital goods received on or after 1.3.2015, towards payment of duty of excise. It shall be noted that this amendment does not provide for utilisation of accumulated balance of credit of the above cesses. [Notification No. 12/2015 CE NT dt. 30.04.2015]

Cenvat Credit in transit sale through dealer

d) Cenvat Credit Rules, 2004 were amended during the budget, 2015, to provide that in case of inputs / capital goods are directly delivered to manufacture or service provider based on the instruction of registered dealer, then the recipient of goods shall availing the credit on the basis of the invoice issued by registered dealer.

   The above amendment was interpreted by the department that in case of transit sale credit could be availed only if such sale is made by registered dealers and not by unregistered dealers.

   In this connection, CBEC clarified that new provisos are meant to improve the ease of doing business by providing an additional facility to the registered dealer or importer for direct dispatch of goods from the manufacturer to the consignee, when he is issuing Cenvatable invoice,. The amendments do not withdraw any past/ existing facility and these amendments should therefore be harmoniously interpreted with the existing rules and circulars in conformity with the legal provisions, keeping the intention of the Government in mind. [Circular No. 1003/10/2015-CX Dated 05.05.2015]

EXPORT BENEFITS TO GOODS SUPPLIED BY DTA TO SEZ

e) On the issue whether supply of goods to SEZ by DTA unit would be entitled for export benefit, in light of amendment to the definition of exports in Cenvat Credit Rules, 2004 and Central Excise Rules,2002, the CBEC has clarified that SEZ Act, supply of goods from DTA to the SEZ constitutes export and since SEZ is deemed to be outside the Customs territory of India, any clearances of goods to an SEZ from the DTA would continue to be export and therefore be entitled to the benefit of rebate under rule 18 of CER, 2002 and of refund of accumulated CENVAT credit under rule 5 of CCR, 2004, as the case may be. [Circular No.1001/8/2015-CX.8 dt. 28.04.2015]

B. IMPORTANT DECISIONS

1. M/s Vir Rubber Products P Ltd Vs CCE 2015-TIOL-68-SC-CX

   Facts: The appellant was engaged in the manufacture of certain articles from vulcanized rubber as bushes for use in the motor vehicles under its own brand name "VIR" and claimed SSI exemption benefit under Notification No.1/93. Apart from the above clearances, the appellant also manufactures goods under the brand name of automobile manufacturers like Hindustan Motors, Kinetic Honda, etc., on which duty is paid

   Department while computing the value of goods for condition of not crossing Rs 300 Lakhs of clearances for claiming SSI benefit, included the value of goods cleared under the brand name of the automobile manufacturers and denied the benefit of SSI exemption

   Decision: Supreme Court held that the where value of the goods bearing brand name of others is not considered for SSI benefit , the same could not have been included while

considering as to whether the appellant is entitled to the benefit of the Notification or not. Once that is excluded and the case is confined to the brand name 'VIR' which is the appellant's own brand name and in respect of which the appellant had claimed exemption, the value of goods cleared in the previous year was less than Rs.3 crores. Based on the above appeal of the party is allowed.

2. M/s Satnam Overseas Ltd Vs CCE - 2015-TIOL-66-SC-CX

Facts: Assessee is engaged in the packing combination of mixture of raw rice, dehydrated vegetables and spices in the name of 'Rice and Spice'. Rice Spice is a combination of Raw Rice, Dehydrated vegetables and certain spices and condiments mixed in a pre-determined proportion and that blended together in a mixer for uniformity and the blended mixer is heated, if required, to sterilize the product. The mixed product is the packed in pouches with Nitrogen flushing for a longer shelf life.

Department's contention is that the product is to be classifiable under the heading 2108 of the Central Excise Tariff Act, 1985, as Miscellaneous Edible preparation not elsewhere specified or included.

Assessee's contention is that the process does not amount to 'manufacture' within the meaning of Section 2(f) of the Central Excise Act, 1944. It was also argued that, in any case, the product was not classifiable under Heading 2108 of the Central Excise Tariff Act, 1985 as claimed by the Revenue but it should be covered under Heading 11.01 which covers products of the milling industry, including flours, meal and grains of cereals, and flour, meal or flakes of vegetables on which nil duty is payable.

Held: Supreme Court held that mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also under goes transformation and it becomes a distinctive and new product.

In the present case, it is clear that mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product. Its primary and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, this rice, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked. Therefore, it is not correct to say that there is a transformation into a new commodity, commercially known as distinct and separate commodity.

Therefore, it is held that the said process of mixing of rice with vegetables and spice does not amount to 'manufacture' as the essential characteristics of the product, still remains the same, namely, rice, a natural corollary would be that it continues to be the product of the milling industry and would be classifiable under sub-heading 11.01 under which the rate of duty on this product, in any case, is 'nil'. Thereby, the appeal filed by the appellant is allowed.

3. M/s Oswal Chemicals & Fertilizers Ltd Vs CCE 2015-TIOL-65-SC-CX

Issue: Whether 'buyer' is entitled to claim refund under Section 11B of Central Excise Act, 1944? Whether filing of appeal after expiry of six months time could result in refund application being time barred?

Held: Supreme Court held that Section 11B does provide for the purchaser making the claim for refund provided he is able to establish that he has not passed on the burden to another person. It, therefore, cannot be said that Section 11-B is a device to retain the illegally collected taxes by the State. This is equally true of Section 27 of the Customs Act, 1962. Therefore, the buyer is eligible to claim refund of duty subject to the condition of unjust enrichment and other conditions specified in Section 11B.

As regards the issue of 'time bar', Supreme Court held that the assessee has claimed the refund for the period from 25.09.1996 to 16.10.1996. In terms of Section 11B, the application for refund was to be made within six months. However, the limitation of six months would not apply where any duty has been paid under the protest. In this regard, it was held that even filing of the appeal should be treated as protest. However, Supreme Court held that even if appeal is treated as a form of protest, in the present case the assessee had filed the appeal much beyond the period of six months from the date of purchase. Therefore, it was held that the refund application is time barred.

4. CCE Vs Grasim Industries 2015-TIOL-64-SC-CX

Issue: As regards, refund claim under Central excise, the issue is that of applicability of unjust enrichment principle to capital goods captively consumed: Whether the doctrine of unjust enrichment is applicable in the case of refund of duty paid on 'capital goods' used captively?

Held: Supreme Court held that the principle of unjust enrichment is applicable even when the goods are used for captive consumption. No doubt, in the Solar Pesticide case, the goods with which the Court was concerned was raw material, imported and consumed in the manufacture of the final product. The question is as to whether this principle would be extended to capital goods also, as it was in respect of raw material. Supreme Court observed that this issue was left open in Mafatlal Industries case. If a particular

material is used for manufacture of a final product, that has to be treated as the cost of the product. Insofar as cost of production is concerned, it may include capital goods which are a part of fixed cost as well as raw material which are a part of variable cost. Both are the components which come into costing of a particular product. Therefore it cannot be said that the principle laid down by the Court in Solar Pesticides would not extend to capital goods which are used in the manufacture of a product and have gone into the costing of the goods. Hence, Supreme Court allowed the Revenue Appeal and answered in favour of the revenue that 'unjust enrichment principle' is applicable to the case of refund of duty paid on 'capital goods' consumed captively.

5. CCE Vs M/s Ispat Industries Ltd - 2015-TIOL-40-SC-CX

Issue: In the context of valuation of excisable goods under Central Excise, whether the cost of transportation charges from the factory gate to the depot is includible in the transaction value?

Held: Supreme Court held that the Tribunal has arrived at a categorical finding that the respondent is not responsible to pay the cost of transport from the place of removal to the place of delivery i.e. from the factory gate to the depot separately. Hence, Supreme Court referred to Rule 5 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000, under which such a cost of transport which is also separately shown in the invoice, the same is not includable in the valuation for the purpose of excise duty. Hence, Supreme Court held that there is no error in the judgment of the Tribunal and dismissed the appeal filed by Revenue.

[Note: during the impugned period, depot was not considered to be place of removal]

6. CCE Vs Mahindra Ugine Steel Co Ltd - 2015-TIOL-53-SC-CX

Issue: The assessee is engaged in the manufacture of motor vehicle parts from the raw material supplied by the customers of the goods on labour charges basis. In essence, thus, the assessee undertakes job work. After the manufacturing of the motor vehicle parts, the same are supplied to the customers who had placed the orders for the job work. The Department confirmed demand determining the value at 115% (It was 115% at that time) of the cost of production, as per Rule 8 of the Valuation Rules.

Held: For applicability of Rule 8, two requirements are to be fulfilled: The first is that the excisable goods that the assessee manufactures are not sold by him and the second requirement is that these goods must be used for consumption either by him or on his behalf in the production or manufacture of other articles.

In the present case, first condition is undoubtedly satisfied as the goods are not sold by the respondent. However, second condition is not at all met or fulfilled inasmuch as the goods are not used by the assessee for consumption either by him or on his behalf in the production or manufacture of other articles.

Therefore, Supreme Court held that once conclusion is arrived that Rule 8 is not applicable in the case of the respondent, it is only Rule 11 which becomes applicable as that is residuary provision for arriving at the value of any excisable goods which are not determined under any other rule.

7. M/s KRCD (I) Pvt Ltd Vs CCE, 2015-TIOL-88-SC-CX

Facts: The appellant records duplicate CDs from a master tape/CD issued to them by distributor who holds copyright in the contents of the CD. The distributor/copyright holder, upon receipt of the duplicate copies from the appellant loads part of the royalty paid to the music producer/ composer on each such CD which is then sold to the ultimate customer in the market. The entire stock of duplicate CDs recorded can only be sold to the distributor/copyright holder and to nobody else. Case of the department is that the royalty paid by the distributor to music director / composer shall also be added to the value for assessment of duty of excise to be paid by the appellant.

Held: Supreme Court, on the basis of the following observations, held that that no part of the royalty amount is required to be added to the value of CD recorded and supplied by the appellant:

- Section 4(1)(a) of the Central Excise Act will not apply for the reason that price is not the sole consideration for the sale as the distributor supplies the master CD, contents which shall have to be duplicated. Therefore, Rule 6 of Valuation Rules shall be adopted.
- In terms of the explanation to Rule 6, value of goods / services supplied free of cost or at reduced cost for use in connection with the production and sale of such goods, shall be added as additional consideration.
- However, in the present case, since entire production is supplied to the copyright holder, and no direct sale being made by the appellant to customer, no part of the copyright which may have been passed on by the distributor to the appellant is used by the assessee in selling the duplicate CDs to the distributor who is himself the owner of the copyright.

Therefore, it was held that explanation to Rule 6 would not be applicable in this case and there is no requirement to add the cost of royalty to the value of goods

8. M/s Life Cell International (P) Ltd Vs UoI 2015-TIOL-844-HC-MAD-ST

Issue: With reference to the services relating to preservation of Stem Cells in Banks, the petitioner filed Writ Petition with question of law - Whether amending Notification 4/2014 ST dated 17.02.2014 extending the exemption by insertion of Sl No 2A in Notification No 25/2012 ST is clarificatory and has retrospective effect.

Held: Hon'ble High Court held that amendatory statutes, like original statutes, will not be given retroactive construction, unless the language clearly makes such construction necessary. The amendment will usually take effect only from the date of its enactment and will have no application to prior transactions, in the absence of an expressed intent or an intent clearly implied to the contrary' and that where a statutory provision is in its nature clarificatory, it will be presumed to be retrospective unless the contrary intention is clearly indicated by the Legislature, the reason being that its underlying purpose of explaining or clarifying the existing law will be effectively served only by giving it such a retrospective construction.

In view of the above, it was held that the intention of the legislature is clear that bringing the services provided by cord blood banks by way of preservation of stem cells under the exemption Notification in order to give exemption of service tax, however, it has not been specifically mentioned that the said amendment should be with effect from the date of exemption Notification. i.e. 20.6.2012, wherein, originally, Entry No.2 has been inserted, giving exemption towards healthcare services by clinical establishment, an authorised medical practitioner or para-medics. Therefore, by virtue of such amendment, it should be construed that the establishments which provide the above said services will get exemption of service tax with effect from the date of amendment, i.e. 17.2.2014 only and they cannot claim it with retrospective effect. Therefore, the amendment cannot be viewed as a clarificatory one and therefore, the Court is unable to countenance the argument advanced by the Petitioner that the so-called amendment is only a clarificatory nature.

9. Secretary to Government Vs UoI 2015-TIOL-895-HC-KERALA-ST

Issue: With regard to levy of Service Tax under the heading Renting of Immovable Property service, a Writ Petition is filed against the order confirming service tax against the Petitioner, who is a State Government department wherein demand is challenged on various grounds like only States have the power to levy tax under Entry 35 read with Entry 18 of List II of the Constitution of India and State Government is not a Person.

Held: The entries in List II do not deal specifically with levy of a tax on renting of immovable property services. It is not in dispute that the legislative sanction for the levy of a service tax on renting of immovable property services is traceable to Entry 97 of List I of the Constitution of India. That being so, and there being no specific entry dealing with the subject of service tax in any of the other lists in the 7th Schedule to the Constitution of India, the competence of the Parliament to legislate in respect of service tax on renting of immovable property services cannot be called in question.

As regards the contention of the petitioners that the State, as a body, will not come under the coverage of the Finance Act, 1994, it was held that as per the specific provisions of Section 65(B)(37) of the Finance Act,1994, the word "person" is defined as including, inter alia, "Government". Thus, as far as the applicability of the Finance Act, 1994, as amended is concerned, it would apply even in respect of services rendered by a State Government, unless the services fall under the negative list of services under the Statute.

10. M/s Lanco Infratech Ltd & Others Vs. CCE, 2015-TIOL-768-CESTAT-BANG-LB:

Issues that were placed before and addressed by Larger Bench of the CESTA are as below:

Issue A: Whether laying of pipelines for irrigation systems or for transmission of water / sewage for Government/ Government undertakings is classifiable under Commercial construction services or erection commissioning services

Held: Laying of pipelines/ conduits for lift irrigation systems for transmission of water or for sewerage disposal, undertaken for Government/ Government undertakings and involving associated activities like trenching, soil preparation and filling, supporting masonry work, jointing of pipes, electro-mechanical works or pumping stations and like activity, is classifiable only under Commercial or Industrial Construction Service (CICS) for the period upto 01.06.2007 and not under Erection, Commissioning or Installation Service (ECIS);

Issue B: Whether construction of canals for irrigation purposes and laying of pipelines etc., undertaken for the Government/ Government undertakings is liable to service tax under WCS as turnkey projects, including engineering, procurement and construction or commissioning projects under clause (e) of Explanation (ii) in the definition of WCS or is excluded from the ambit of WCS since it is in respect of a "Dam" and thus stands excluded from WCS, as defined

Held: Construction of canals for irrigation or water supply; construction or laying of pipelines/ conduits for lift irrigation conceived and integrated into a dam project, must be classified as works contract "in respect of dam" and is thus excluded from the scope of "Works Contract Service" defined in Section 65(105)(zzzza) of the Act, in view of the exclusionary clause in the provision;

Issue C : Whether, turnkey projects, including engineering, procurement and construction or commissioning (EPC) projects specified in clause (e) is merely an enumeration of the mode of execution of taxable services specified in clauses (a) to (d) of definition of works contract or is a wholly distinct taxable service and is exigible to service tax as an independent species of works contract service

Held: Turnkey/ EPC project contracts, enumerated in clause (e), Explanation (ii) in Section 65(105)(zzzza) of the Act is a descriptive and ex abundant cautela drafting methodology. In the light of the decision in Alstom Projects India Ltd., fortified by the Special Bench decision (dated 19.03.2015) in Larsen & Toubro Ltd. reference, a turnkey/ EPC contract is taxable prior to 01.06.2007 as well. On and since 01.06.2007, turnkey/ EPC contracts must be classified on the basis of the essential character of the service provided thereby, with the aid of classification guidelines set out in Section 65A(2) of the Act. Consequently, a turnkey/ EPC contract must be classified under any of the clauses (a) to (d), Explanation (ii), Section 65(105)(zzzza). The bundled bouquet of services provided as turnkey/ EPC contract, classifiable as Commercial or Industrial Construction Service (CICS) prior to 01.06.2007, would be classifiable under clause (b), Explanation (ii), Section 65(105)(zzzza) on and from 01.06.2007 and would not be exigible to service tax if the rendition of service thereby is primarily for non-commercial, non industrial purpose, in view of the exclusionary clause in clause (b) of the definition of WCS.

Issue D : Even if clause (e) in Explanation (ii) of WCS is considered a distinct and independent service, whether the services of construction of canals for irrigation purposes and laying of pipelines either as part of lift irrigation systems etc., undertaken for Government/ Government undertakings, the same is more appropriately covered under clause (b) of Works Contract Service (Commercial construction activities) and would be taxable even if the rendition of service thereby or thereunder, was not primarily for non commercial or non industrial purposes;

Held: Construction of canals/ pipelines/ conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/ Government undertakings would be for non-commercial, non–industrial purposes, even when executed under turnkey/ EPC contractual mode, would fall within the ambit of clause (b), Explanation (ii) of Section 65(105)(zzzza); and would consequently not be exigible to service tax, in view of the exclusion enacted in clause (b); and

Issue E: Where execution of the whole or a part of the work is sub-contracted on back to back basis by the main contractor (which is a joint venture) to sub contractors, in the absence of any transfer of property in goods involved in the execution of such works, from the main contractor to the Government/ Government undertakings, whether levy of service tax in the hands of appellant (main contractor) is valid under WCS, in the light of the judgment in State of A.P. vs. L & T Ltd

Held: Where under an agreement, whether termed as works contract, turnkey or EPC, the principal contractor, in terms of the agreement with the employer/ contractee, assigns the works to a sub-contractor and the transfer of property in goods involved in the execution of such works passes on accretion to or incorporation into the works on the property belonging to the employer/ contractee, the principal contractor cannot be considered to have provided the taxable (works contract) service enumerated and defined in Section 65(105)(zzzza) of the Act.

11. CCE & ST Vs Gardex 2015-TIOL-660-CESTAT-DEL

Issue: The Respondent is manufacturing Hand tools which had been cleared on payment of duty and Garden tools which are fully exempt from duty under notification no. 5/-2006-CE dated 1.3.2006 and these garden tools have been exported out of India under letter of undertaking without payment of duty. Department demanding the reversals under rule 6 of CCR, 2004 and the first appellate authority Commissioner(A) allowed the respondent's appeal. Revenue has filed an appeal before CESTAT.

Held: For an earlier period on identical issue in respect of same respondent, it is held that respondent have correctly availed the CENVAT credit in respect of the inputs for garden tools which were exported out of India and have correctly utilized the credit for payment of duty on the other dutiable final products which were exported out of India under rebate claim. Hon'ble Tribunal held that Rule 5 of CCR, 2004 nowhere states that the same would not be applicable when the final products exported under bond or under letter of undertaking are the goods fully exempted from duty. Tribunal relied upon the decision of Bombay High Court in Repro India 2007-TIOL-795-HC-MUM-CX and dismissed the Revenue appeal.

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Notifications under New Industrial Policy 2015-2019 – Entry Tax Exemptions

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

I) Exemption from Entry Tax to new micro/small/ Medium Enterprise

Notification I

Notification FD 01 CET 2015 dated 23.4.2015 states that with reference to powers conferred under section 11-A of KTEG Act 1979 the Government of Karnataka exempts the tax payable with effect from 01.10.2015

- on the entry of plant and machinery and capital goods for use including those brought for the purpose of establishing captive power generation plant into a local area caused by a dealer who is new micro/small/Medium Enterprise / Industrial unit located in areas other than Hyderabad Karnataka (HK) area Zone 1, Zone 2 or Zone 3 and HK area Zone 1 and Zone 2 as specified in Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of **three** years from the date of commencement of its project implementation.
- On the entry of any goods for use as raw material inputs, component parts and consumables (excluding petroleum products) into a local area caused by a dealer who is a new micro/small/Medium Enterprise / Industrial unit located in areas other than Hyderabad Karnataka (HK) area Zone 1, Zone 2 or Zone 3 and HK area Zone 1 and Zone 2 as specified in Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of **Five years** from the date of commencement of commercial production of such unit for General Category Entrepreneurs and **Six years** from the date of commercial production of such unit promoted by SC/ST Entrepreneurs, Women Entrepreneurs and Minorities, Backward classes (Category 1 and 2A) only , physically challenged Ex servicemen entrepreneurs.

II) Exemption from Entry Tax to new Large/Mega/Super mega/Ultra mega enterprise

Notification II

Notification FD 01 CET 2015 dated 23.4.2015 states that with reference to powers conferred under section 11-A of KTEG Act 1979 the Government of Karnataka exempts the tax payable with effect from 01.10.2015

- on the entry of plant and machinery and capital goods for use including those brought for the purpose of establishing captive power generation plant into a local area caused by a dealer who is new Large/Mega/Super mega/Ultra mega enterprise/Industries located in areas other than Hyderabad Karnataka (HK) area Zone 1, Zone 2 or Zone 3 and HK area Zone 1 and Zone 2 as specified in Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of **three years** from the date of commencement of its project implementation for Large and Mega Enterprises and Five years for Ultra Mega and Super mega Enterprises.
- On the entry of any goods for use as raw material inputs, component parts and consumables (excluding petroleum products) into a local area caused by a dealer who is a new Large/Mega/Super mega/Ultra mega enterprise/ Industrial unit located in areas other than Hyderabad Karnataka (HK) area Zone 1, Zone 2 or Zone 3 and HK area Zone 1 and Zone 2 as specified in Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of five years from the date of commencement of commercial production by Large Enterprises, Six years for Mega Enterprises , Seven years for ultra Mega Enterprises and Eight years for Super Mega Enterprises.

III) Exemption from Entry Tax to new Large/Mega/Super mega/Ultra mega enterprise identified as Focused Manufacturing Sector Industry

Notification III

Notification FD 01 CET 2015 dated 23.4.2015 states that with reference to powers conferred under section 11-A of KTEG Act 1979 the Government of Karnataka exempts the tax payable with effect from 01.10.2015

- on the entry of plant and machinery and capital goods for use including those brought for the purpose of establishing captive power generation plant into a local area caused by a dealer who is new Ultra Mega/Super mega/Industrial Unit identified as focused Manufacturing sector Industry I,e Automotive Machine tools excluding steel and cement and located in areas other than Hyderabad Karnataka (HK) area Zone 1, Zone 2 or Zone 3 and HK area Zone 1 and Zone 2 as specified in Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of **five years** from the date of commencement of its project implementation.

- On the entry of any goods for use as raw material inputs, component parts and consumables (excluding petroleum products) into a local area caused by a dealer who is a new ultra mega Industrial unit identified as Focused Manufacturing sector industry I,e Automotive Machine tools excluding steel and cement and located in areas other than Hyderabad Karnataka (HK) area Zone 1, Zone 2 or Zone 3 and HK area Zone 1 and Zone 2 as specified in Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of **nine years** from the date of commencement of commercial production of such unit.

Procedure for complying the above Notifications:

The **Capital goods** includes plant and Machinery and equipments procured for captive generation of electricity. New Industrial Unit means a unit which has made new investment on fixed asset and includes an existing unit undertaking expansion/diversification/modernization as defined in annexure 5 of Government Order No CI 58 SPI 2013 dated 01.10.2014.

- This Notification is applicable to all new and an additional investment in expansion/diversification/modernization made on or after 1st October 2014 on or before 31st March 2019 or till a new policy is announced.
- This Notification is applicable only to Manufacturing Enterprises and Service enterprises listed in annexure I to the Government order No CI 58 SPI 2013 dated 1st October 2014
- This Notification shall not apply to such of those industrial units which have already granted a package of Incentives and Concession as per previous policies. A Micro or small or Medium Enterprises/ Large or Megha/Super mega or ultra mega enterprises/Focused Manufacturing Industry i.e Industrial unit from the date on which its registration with the Director of Industries and Commerce Government of Karnataka is cancelled.

- The **Ineligible industries** listed in Annexure 2 to the Government order No CI 58 SPI 2013 dated 01.10.2014 irrespective of its location.

Procedure

- An industrial unit claiming tax exemption under this notification shall produce the following documents at the time of filing first monthly or quarterly statements under the Karnataka Tax on Entry of Goods Rules 1979
- In the case of new Micro/Small/ Medium Enterprises / Industrial unit a certificate in original issued by the Director of Industries and Commerce Government of Karnataka or his authorized nominee certifying

(i) That it is a unit registered as such.

(ii) The unit is promoted by the category of Entrepreneur as defined in the Government order No CI 58 SPI 2013.

(iii) The value of fixed assets in terms of land, building and plant and machinery and such other productive assets like tools, jigs and fixtures, dyes, utilities like boilers, compressors, diesel generating sets, cranes, material handling equipments and such other equipments which are directly related to production purpose on the date of commencement of commercial production.

(iv) That no part of its fixed asset other than land and building is old/used/second hand with the exception of those imported from outside the country.

(v) The date on which investment and fixed asset had taken place

(vi) The date of commencement and completion of project implementation of the unit

(vii) The date of commencement of its commercial production

(viii) That it is eligible for exemption from payment of entry tax as per GO

(ix) The Zone in which the unit is located and category under which the unit is eligible for tax exemption

In each of the subsequent years for which the tax exemption is claimed under this notification the unit shall produce a certificate from the Director of Industries and Commerce Government of Karnataka or his authorized nominee within sixty days of the commencement of the year certifying that the registration of the unit is valid for the year.

IV) Exemption from Entry Tax to Export Oriented Units

Notification IV

Notification FD 01 CET 2015 dated 23.4.2015 states that with reference to powers conferred under section 11-A of KTEG Act 1979 the Government of Karnataka exempts the tax payable with effect from 01.10.2015

- on the entry of plant and machinery and capital goods for use into a local area caused by a dealer who is 100%

Export Oriented unit and other export oriented unit with a minimum export obligation of 50% of their total turnover who is a new industrial unit located in the state as specified in the Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of three years from the date of commencement of its project implementation irrespective of Zones.

- On the entry of any goods for use as raw material inputs, component parts and consumables (excluding petroleum products) into a local area caused by a dealer who is one hundred percent Export Oriented units and other export oriented unit with a minimum export obligation of 50% of their total turnover, a new industrial unit located in the State as specified in the Government order No CI 58 SPI 2013 dated 01.10.2014 for a period of five years from the date of commencement of commercial production of such unit irrespective of Zones subject to following restrictions and conditions namely
- Such goods are put to use by one hundred percent Export oriented unit (100% EOU) and other export oriented units with a minimum export obligation of 50% of their total turnover in a manufacture or processing of goods in Karnataka and the goods so manufactured or processed are exported out of the territory of India
- The One Hundred Percent Export oriented unit and other export oriented units (EOU) with a minimum export obligation of 50% of their total turnover shall export its obligated production of goods subject to relaxation permitted by Government of India from time to time
- Where for any reason the one hundred percent Export Oriented unit and other export oriented units with a minimum export obligations of 50% of their total turnover fails to comply with the condition it shall immediately cease to eligible for the benefit of this notification
- One hundred percent Export Oriented unit is one which undertakes export of its entire production of goods subject to relaxation as permitted by Government of India from time to time. Such units may be set up either under the Export Oriented unit or under EPIP(Export Promotion Industrial park) Scheme or under the EHTP (Electronic Hardware Technology Park) Scheme or Software Technology Park Scheme or Special Economic zone
- Other export oriented unit is one which undertakes the minimum export obligation of 50% of the total turnover
- Export means export as defined in Sub section (1) and (3) of Section 5 of the Central Sales Tax Act 1956
- Eligibility to exemption of tax under this Notification is restricted to one hundred percent Export oriented units and other Export oriented units with a minimum export obligation of 50% of their total turnover as per the package of incentives and concessions as per Government order CI 58 SPI 2013 dated 01.10.2014
- Any unit whose project implementation commences on or before 31st March 2014 shall be eligible for tax exemption till the expiry of three years from such date.

Procedure:

The One Hundred percent Export oriented unit and other export oriented unit with a minimum export obligation of 50% of their total turnover claiming exemption under this Notification shall produce before its assessing Authority.

Certificate issued by the Director of Industries and Commerce Government of Karnataka or by an authority of the Government of India certifying that it is registered as one hundred percent Export Oriented units and other Export Oriented unit with a minimum export obligation of 50% of their total turnover and is eligible for the incentives and concession as per G.O No CI 58 SPI 2013 dated 1st October 2014 and containing the date of commencement of its project implementation. The said certificate shall be produced in proof of it being valid in each year within sixty days of commencement of the year.

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Retrospective Operation of the Amendment to Section 10(3) of the Karnataka Value Added Tax Act

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

Introduction.

The Karnataka Value Added Tax (Amendment) Act, 2015 ("the 2015 Amendment Act"), was brought into force with effect from April 1, 2015. Among other things, the Amendment Act substituted Section 10(3) of the Karnataka Value Added Tax Act, 2003 ("the KVAT Act"). The new provision was inserted with the intention of relaxing the rigours imposed on dealers as a result of the Karnataka High Court's judgment in State of Karnataka v. Centum Industries, 2014 (80) KLJ 65. An interesting question is whether the amendment would apply only prospectively and benefit dealers only from April 2015, or if it could be applied retrospectively in respect of tax periods prior to April 2015. This article briefly discusses the general principles of law relating to retrospective operation of statutory provisions, and concludes that it would be very difficult to contend that the newly substituted Section 10(3) would apply retrospectively.

Section 10(3) – Before and after Amendment.

Section 10(3) of the KVAT Act, prior to its amendment, read as follows:

> *"Subject to input tax restrictions under 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 the Act."* (Emphasis added).

The Karnataka High Court, in Centum Industries, held thatin Section 10(3), the use of the expression "the input tax deductible by him as may be prescribed in that period" implies that a dealer must claim credit of input tax in its returns filed for the month in which it purchases the inputs and not in its returns filed for any other period. In other words, the Hon'ble High Court interpreted Section 10(3) to mean that the net tax payable by a dealer is the output tax payable on sales effected in that period less the input tax paid on purchases effected in the same period.For instance, if a dealer purchases certain goods and invoices are raised on him in the month of May, the dealer must claim deduction of the input tax paid by him in his returns filed in the month of May itself and not in any other tax period. The High Court further clarified that if the dealer does not claim input credit in the same month, he could file revised returns within the time period prescribed under Section 35(4), namely, six months from the end of the relevant tax period.This strict interpretation of Section 10(3) caused considerable hardship to dealers, and based on representations made by the dealers, the Legislature substituted Section 10(3) vide the 2015 Amendment Act. The new provision reads as follows:

> *"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 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 the Act."*

Therefore, with effect from April 1, 2015, a dealer ispermitted to avail credit of tax paid on inputs purchased five months prior to the tax period in which the credit is being availed. For instance, a dealer is permitted to take credit of goods purchased in the months of November, December, January, February, and March in his returns filed for the month of April. Interestingly, the dealer will also have an additional six months thereafter to file revised returns for the month of April and claim any unavailed credit. The new provision has, therefore, considerably eased the hardships caused to dealers as a result of the High Court's judgment inCentum. However, for tax periods prior to April 2015, the commercial taxes department has been reopening a number of assessments and denying input tax credit claimed by assessees based on the judgment of the High Court in Centum Industries. This article, therefore, analyzes whether the new provision can be applied retrospectively in order to ease the burden on dealers for tax periods prior to April 2015.

Law relating to Retrospectivity.

It is a settled position that, unless a contrary intention appears, a legislation is presumed not to have retrospective effect. In CIT v. Vatika Township, (2015) 1 SCC 1, the Supreme Court held that the surchargeon block assessment income could only be levied prospectively under the proviso to Section 113 of the Income Tax Act, 1961 ("the IT Act"). In the said

judgment, the Supreme Court succinctly summarized the law governing retrospectivity of taxing statutes. The relevant observations of the Supreme Court are as follows:

> *"Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation. The idea behind the rule is that a current law should govern current activities. Law pressed today cannot apply to events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset This principle of law is known as lexprospicit non respicit: law looks forward not backward."*

The basis of the rule against retrospectivity is the principle of fairness. Therefore, legislations that modify accrued rights or impose new obligations and duties have to be applied prospectively. The exception to the rule is where the legislation is for the purpose of supplying an obvious omission in the prior provision or to clarify certain aspects of it. Such statutory provisions are known as "clarificatory" or "declaratory" statutes. In short, the presumption against retrospective operation is not applicable to clarificatory or declaratory statutes. As stated succinctly by G.P. Singh in his treatise on interpretation of statutes, "[t]he usual reason for passing a declaratory Act is to set aside what [the Legislature] deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes." In determining whether a statute is declaratory or not, regard must be had to the substance rather than the form, that is, the intention of the Legislature must be evident from the wording of the provision. Therefore, if a new provision is intended to explain an earlier provisionor to cure certain defects in it, the new provision will necessarily have to be read retrospectively. However, in the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. Moreover, as held by the Supreme Court in Govind Das v. ITO, (1976) 1 SCC 906, "[i]f the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

Interestingly, in Vatika Township, the Supreme Court observed that, "where a benefit is conferred by a legislation, the rule against a retrospective construction is different." The Court further went on to observe as follows:

> *"If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. In Govt. of India v. Indian Tobacco Assn., the doctrine of fairness was held to be a relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature."*

Therefore, the Supreme Court has held that in cases where a benefit is conferred by a legislation, it would generally apply retrospectively, as opposed to a provision imposing a burden or liability,where the presumption is that the provision is prospective in nature.

Can Section 10(3) be applied retrospectively?

As discussed earlier, Section 10(3), as substituted by the 2015 Amendment Act, greatly benefits dealers as it relaxes the rigours of the earlier Section 10(3), as interpreted by the High Court in Centum Industries. An argument, albeit a very feeble one, can be made on the basis of the Supreme Court's judgment in Vatika Township that the newly inserted provision applies retrospectively since it is a beneficial legislation. Undoubtedly, the amendment confers a benefit on a large swathe of dealers without inflicting a corresponding detriment on any person. However, as per the Supreme Court's judgment in Vatika Township, in order for the amendment to apply retrospectively, the Legislature's object must be to confer such a benefit. The words of the statute do not give any indication whatsoever that the Legislature intended it to apply retrospectively.The timing of the amendment, that is, after the High Court's judgment in Centum Industries could suggest that the Legislature intended to negate the harsh effects of the judgment. However, it would be very difficult to argue that the Legislature intended to overcome the effect of Centum Industries even in respect of tax periods prior to April 2015.

Moreover, Section 5 of the 2015 Amendment Act, which amended Section 10(3) states that, "in section 10 of the principal Act, for sub-section (3), the following shall be substituted." (Emphasis added).On a reading of the above quoted amending provision, two important propositions emerge: (1) the old provision is"substituted"by the new one and (2) the Legislature has not expressly stated that the provision is to be retrospectively inserted. Of course, if the latter had been expressly stated, there would have been no need for this discussion and it would have been clearly evident that the new Section 10(3) would apply retrospectively.It is, therefore, crucial to examine the effect of a substitution and discern whether it would result in the provision being applied retrospectively.

In State of Rajasthan v. MangilalPindwal, (1996) 5 SCC 60, theinterpretation of the expression "substitute" fell for the Supreme Court's consideration. The Court held that, "the process of a substitution of a statutory provision consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place." In other words, "the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision." The Court further observed that, "as a result of repeal of a statute the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal."

Applying the ratio of the Supreme Court's judgment in MangilalPindwal, it is discernible that the old Section 10(3), which was substituted with effect from April 1, 2015, stood repealed on the said date, and was replaced by the new provision. Pertinently, as per the observations of the Court in MangilalPindwal, the repeal does not affect the operation of the old provision during the period it was operative prior to April 1, 2015. Therefore, by using the word "substituted," the Legislature appears to have made it clear that it intends to apply the new provision only prospectively and not retrospectively.

Conclusion.

The amendment to Section 10(3) is a welcome measure that has brought relief to a number of dealers across the State. The Government must be lauded for understanding the hardship caused to dealers as a result of the High Court's harsh interpretation of Section 10(3) in Centum Industries, and promptly amending the law. However, for the tax periods prior to April 2015, the new provision will not come to the dealers' rescue. The dealers' only hope for the tax periods prior to April 2015 is that the High Court's judgment in Centum Industries is set aside by the Supreme Court, or if the judgment is overruled by a larger bench of the Karnataka High Court. In this regard, it is relevant to point out that the Supreme Court, in Special Leave Petition (Civil) No. 31683-64/2014 filed by Centum Industries, ordered on January 7, 2015, that the matter be tagged along with the special leave petition filed by Infinite Builders (SLP No. 23888/2013). The matters will, therefore, be heard together and one can only hope that the Supreme Court reverses the High Court's judgments in the both Infinite Builders and Centum Industries. One can only hope for a favourable outcome.

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Indirect Tax Applicability to Software Industry

(Contd. from page 7)

3. **Implementation of software/installation:** There is no transfer of property in goods nor a right to use goods. Merely an implementation service, subject matter of only service tax.
4. **Testing:** It is a pure service, as there is no transfer of right to use the software. Liable only to service tax.
5. **Debugging:** Only if there is a transfer of software, it is liable to sales tax. Debugging not involving additional software addition would be liable to only to Service tax.
6. **Maintenance of software:** This maybe a works contract or a service contract. If works contract liable for both. If pure service contract, it is not liable to sales tax.
7. **Software on server / cloud**: This is a new methodology where the control and possession of the data/ programs being accessed remain with the service provider [ISP] which maybe hosted on the server of the vendor in or outside India. The contract allows the customer to access the site and enjoy certain privileges. This would be liable only to service tax.
8. **Manpower supply within India or outside India:** Software engineers with specific skills/ qualification provided within India, it is liable to service tax. When sent abroad, where they are employed by foreign companies and they perform software related services there. As there is no transfer of property in goods[software] in both scenarios, it is not liable to sales tax.Service tax may also not be applicable, as services are done outside India.
9. **Software Development outside India:** The Indian company gets software development contract. Its engineers go abroad to render services on the foreign clients' site. There is no VAT/CST or service tax liability as the activities are done completely outside India.

The above models are merely indicative and there could be many more permutations and combinations. The indirect tax implications may need to be examined separately, depending on the activities done as per agreement between the parties.

Conclusion

In this article the paperwriter has sought to examine the applicability of various taxes to software along with possible exemptions/exclusions. There is overlap between various levies and in absence of any clarity, the assessee may continue to pay multiple taxes, which would be finally borne by the end customer. It is hoped that under GST law, there would be some mechanism to ensure that taxes are not paid on more than 100% of base amount charged towards software by assessee.

For further clarifications host on
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One Day Seminar on 'Co-operative Bank - Income tax and Audit compliances', held on 26th April 2015 at Bagalkot.

Photo Gallery

Bagalkot District CA Association Committee Members welcoming with flower bouquet

CA Shivaram Hegde presenting to President

CA P.S. Jain presenting to Vice President

CA R.N. Mundra presenting to Secretary

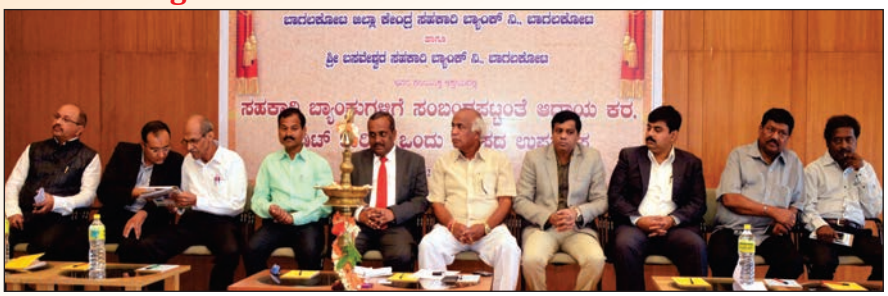
CA. Kasat presenting to Treasurer

CA Kumar Jigajinni presenting to CA D.R. Venkatesh

Inaugural & Technical Session

Invocation by Smt. Ratna Cholachagudda

Welcome Speech by Sri Basavaraj Navalagi



Dignitaries on the Dais

Master of Ceremony by Sri Mahabaleshwar Gudagunti

Welcome & Honouring Guests and Speakers

Inaugural address by Sri Prakash Tapashetti President, Sri Basaveshwara Co-Op. Bank

Address by CA Raveendra S Kore President, KSCAA

CA D.R. Venkatesh

CA Ravindranath B.V.

CA Shivakumar H

Vote of thanks by CA Gokul Malpani

Cross section of audience

Delegates enjoying the hospitality

Discussion with Sri Prakash Tapashetti

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Two Day National Tax Conference

on Saturday, **13th** & Sunday, **14th** of **June 2015**

at **Hotel Le-Meridian**, Sankey Road, Bangalore

10* Hrs. CPE

** Unstructured*

DAY 1 - 13th June 2015

09:45AM INAUGURAL SESSION

Inauguration by

Chief Guest :

Shri D.V. Sadananda Gowda

Hon'ble Minister for Law and Justice, Govt. of India

Guest of Honour:

Mr. F.R. Singhvi, *Renowned Industrialist*

11:30AM SESSION I

Gearing up for GST

CA. Madhukar Hiregange, *Bengaluru*

Chairperson:

Ms. Anita Sumanth, *Advocate, Chennai*

01:15PM LUNCH

02:15PM SESSION II

Important Amendments in Service Tax

Mr. K. Vaitheeswaran*

Advocate, Chennai

Chairman:

Mr. Bharathji Agarwal

Sr. Advocate, Lucknow

04:00PM SESSION III

Companies Act, 2013

Important provisions for practitioners

CA. Gururaj Acharya, *Bengaluru*

Chairman:

CA. P.V. Srinivasan

Corporate Advisor in Tax and Corporate Laws matters
Wipro Limited, Bengaluru

DAY 2 - 14th June 2015

08:00AM Breakfast

09:00AM SPIRITUAL SESSION

by a renowned personality

10:15AM SESSION IV

Direct Taxes

Finance Act 2015

Discussion on Provisions relating to
- TDS & Place of effective management

CA. PVSS Prasad, *Hyderabad*

Chairman:

Jnanasagara CA. S. Krishnaswamy, *Bengaluru*

12:00noon SESSION V

Labour Laws

for practising professionals

Mr. B.C. Prabhakar, *Advocate, Bengaluru*

Chairman:

An eminent resource person

01:15PM LUNCH

02:15PM SESSION VI

Panel discussion on Works Contract

(VAT/Service Tax/Income Tax)

CA. Raghuraman, *Advocate, Bengaluru*
CA. K.K. Chythanya, *Advocate, Bengaluru*
CA. Vishnumurthy, *Bengaluru*

Moderator:

CA. S Ramasubramanian, *Bengaluru*

04:30PM VALEDICTORY SESSION

Organized by

Bangalore Branch of SIRC of ICAI

Jointly with

All India Federation of Tax Practitioners (AIFTP) &

Karnataka State Chartered Accountants Association (KSCAA)

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