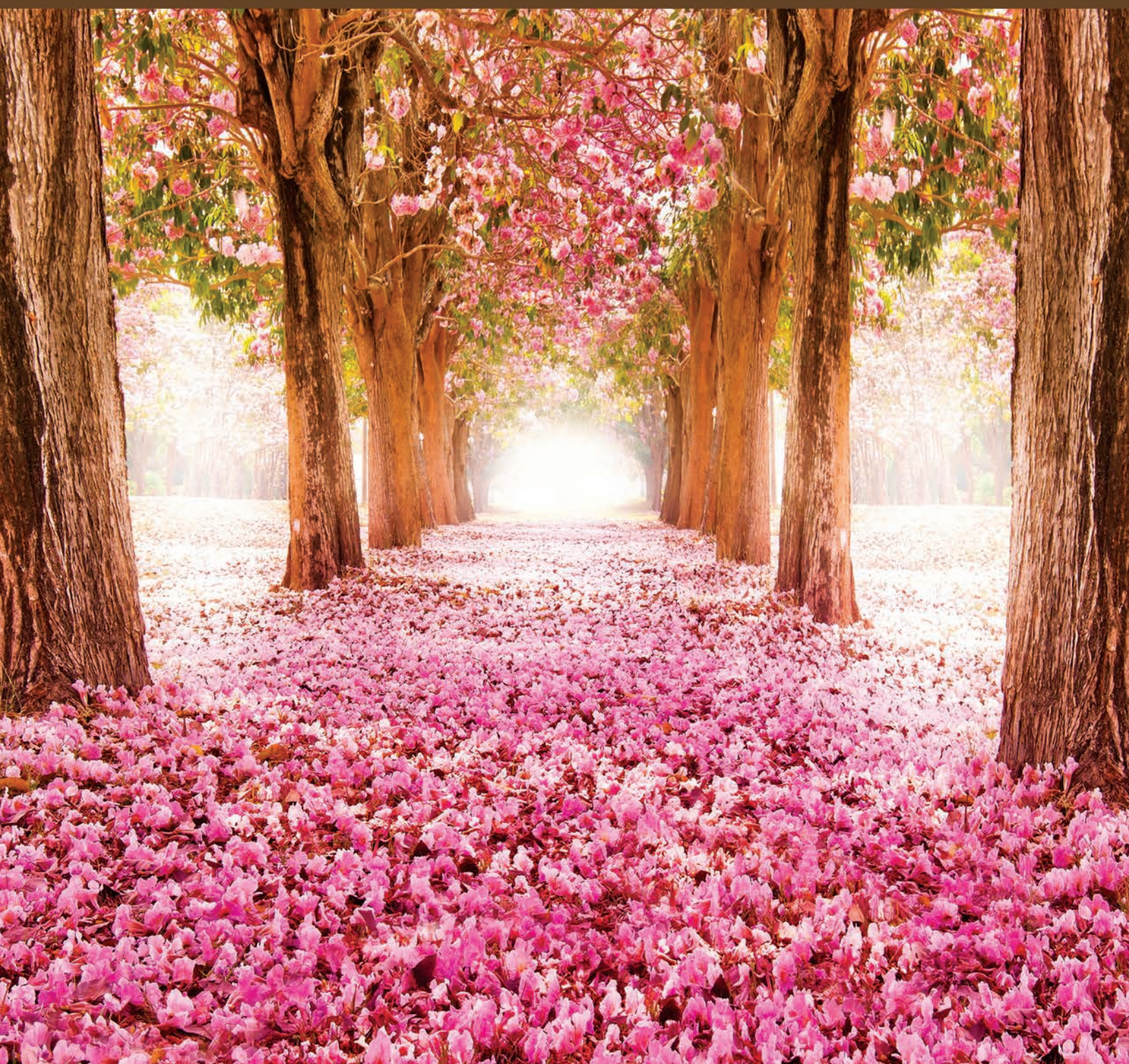
# KSCAA NEWS BULLETIN

English Monthly
for Private Circulation only

Vol. 3 • Issue 8 • ₹ 25/- • April 2016



# President's Communique

*Dear Professional Colleagues,*

Kicking off a fresh start with the Indian New Year. Ugadi marks a naturally auspicious time to begin new ventures, set personal goals for self-improvement, and reconnect with the Divine. I hope you all had an eventful bank audit season to kick start this year. May you have all a prosperous, exciting, successful and fulfilling new year ahead.

You all would be aware that Section 63 of the Karnataka Co-operative Societies Act, 1959 was amended in Sept'2014 to include Cost Accountants and Cost Accountant firms for audit of Co-operative Societies. The Association had filed writ petition before the Honorable High Court of Karnataka challenging the above amendment in KCS Act as null and void. Our writ petition came to be dismissed by the Honorable High Court of Karnataka on 29th March 2016. A copy of the order dated 29th March 2016 is published elsewhere in this News Bulletin. Though, our writ petition was dismissed, the Honorable High Court made a very categorical observation that Chartered Accountancy and Cost Accountancy professions are exclusive domains and are statutorily governed by separate enactments. There can be no overlapping and entrenchment of such functions. However, the Honorable High Court took a view that it is not evident from the impugned amendment to the KCS Act that Cost Accountants are being allowed to perform exclusive functions of Chartered Accountants. After making such an unqualified observation in the order, the Honorable High Court took a diametrically opposite view which is contrary to its own observation. We had a preliminary round of discussion with our Advocate representing the matter to explore the possibility of challenging the order dated 29th March 2016 before the Division Bench of the Honorable High Court of Karnataka. We are also planning to call a mentors meet to take their views and opinions to take further course of action. As this judgement has far reaching ramifications at the national level, we have informed the Institute of Chartered Accountants of India about the order and sought their support to take this battle to the next level. We will assure the members that we will not leave any stone unturned until this matter is decided in our favour. I take this opportunity to request all the members to generously contribute to the legal fund which will strengthen the Association to fight such legal battles to its logical conclusion.

The Council of the Institute of Chartered Accountants of India in its **"Announcement – Responding to Tenders"** dated 4th April 2016 has issued stricter guidelines for members participating in tenders for assignments that can be performed only by the Chartered Accountants. As per the said announcement, members are barred from responding to tenders in the exclusive areas of practice of Chartered Accountants, like audit and attestation services i.e. those areas where the assignments can be performed only by Chartered Accountants or where only Chartered Accountants have been invited for audit assignments. However, wherever minimum fee of the assignment is prescribed in the tender document itself, members may participate in such tendering process. In those areas, where along with Chartered Accountants, other professionals can also apply for the tender, there is no restriction for the Chartered Accountants to respond to the tenders floated by authorities from time to time. Further, ICAI has cautioned that members who violate the guidelines with respect to participating in tendering process would be liable for disciplinary action. Being an Apex body, ICAI could have taken up the matter with the Central and State Government Authorities for abolishing tendering process in audit and attestation services which are the exclusive areas of practice of Chartered Accountants. We sincerely believe that this announcement is premature and restricting members from participating in tendering process will not help in the longer run.

Rule 37 BB of the Income-tax Rules has been amended vide Notification No. G.S.R. 978(E) dated 16th December, 2015 to strike a balance between reducing the burden of compliance and collection of information under section 195 of the Act. The amended rules have taken effect from 1st April 2016. No Form 15CA and 15CB will be required to be furnished by an individual for remittance which do not require RBI approval under its Liberalized Remittance Scheme (LRS). Further the list of payments of specified nature mentioned in Rule 37 BB which do not require submission of Forms 15CA and 15CB has been expanded from 28 to 33 including payments for imports. A CA certificate in Form No. 15CB will be required to be furnished only in respect of such payments made to non-residents which are chargeable to tax and the amount of payment during the year exceeds Rs. 5 lakhs. Now, CA Certificate in Form 15CB is also required to be filed online. Members are requested to educate their clients and trade accordingly.

Ministry of Corporate Affairs vide its general circular no. 03/2016 dated 12th April 2016 has decided to relax the additional fees payable on e-forms which are due for filing by companies between 25th March 2016 to 30th April 2016 as one-time waiver of additional fee and it has also clarified stakeholders that if such due e-forms are filed after 10th May 2016, no such relaxation shall be allowed. Members are requested to educate their clients and trade accordingly.

Karnataka State Budget 2016 proposals and Karnataka Value Added Tax (Amendment) Act, 2016 have taken effect from 01st April 2016. VAT Rate has been increased from 14.5% to 20% on aerated water and carbonated non-alcoholic beverages. Rate of tax increase on petrol from 26% to 30% and diesel from 16.65% to 19%. Entertainment tax increased from 6% to 10% on Multi system operators (MSOs) and Direct to Home service providers (DTHs). Amendment to Sub-section 3 of section 10 of KVAT Act, 2003, to bring in clarity so as to have effect only from 1.4.2015. Amendment to Section 10 of the KVAT Act, 2003 to assess the dealers who are statutorily required to upload but fail to upload such purchase and sales statement by disallowing input tax. Reduction of mandatory payment of disputed tax and other amounts to 30% to get stay from First Appellate Authority and Karnataka Appellate Tribunal and to facilitate dealers to file appeal to the first appellate authority electronically. Members are requested to educate their clients and trade accordingly.

Association pays tributes to Dr. B.R. Ambedkar, the chief architect of India's constitution on his 125th birth anniversary.

***"Life should be great rather than long" – Dr. B.R. Ambedkar***

How should one's life be? Should we look at achievement, fulfillment, longevity, enjoyment? I do agree that the answers are different to each one of us and rightly so. There can never be one single answer or a right answer, but this one seems to make sense – making life great, making life count. I would like to believe that we all are here for a reason and that reason is unique to each one of us. The purpose is just to try and live to these ideals and make the best out of ourselves.

In service of the Profession,

**CA. Dileep Kumar T M**
President

KSCAA
News Bulletin
April 2016
Vol. 3 Issue 8
No. of Pages : 20

## CONTENTS





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

**email: kscaablr@gmail.com**

**Website: www.kscaa.com**

# Service Tax Liability on Land Owners Share

**CA Madhukar N Hiregange** and **CA Mahadev.R**

The prohibitive cost of land in major cities means a high investment of monies for developing any property. Finance constraints add to the challenge. Therefore, in the case of construction projects, it is common to enter into joint developments agreements where the developer undertakes to develop property (residential / commercial) in exchange for the development rights. The constructed property would be shared between the land owner and the developer at agreed ratio. Service tax implication on such share of property handed over to landowners has been subject matter of debate from 2012. In this article, we examine the service tax implication.

Service tax law went through a substantial change after the introduction of negative list tax regime from 01.07.2012 as against earlier positive list taxation. Therefore, it would be important to discuss the service tax impact before and after 01.07.2012 with more emphasis on impact after negative list introduction.

***SERVICE TAX IMPACT BEFORE 01.07.2012***

There are various reasons to contend that the service tax is not applicable on land owners share till 01.07.2012. The CESTAT in case of *Purvankara Projects Ltd Vs CST Bangalore (2010-TIOL-28-CESTAT-Bang-Stay)* held that construction of flats and transferring them to land owners who are co-builders in exchange for land received from them cannot be held to be any service.

The joint development agreements entered assume the character of a joint venture as the land owner brings in the land and the developer brings experience for construction and sale of properties with motive of profit. Service tax would get attracted only when there is a service provider and the service receiver. In a joint venture, the concept of mutuality prevails in as much as there are no two parties involved. It can also be argued that this is a transaction of barter where one gives land to get constructed property.

Further, there was a circular no.108/2009-ST wherein it was clarified that the residential complex constructed would be not be liable for service tax when the constructed property was meant for personal use / renting by the land owners.

However, vide Circular no.151/2/2012-ST, it was clarified that service tax is payable on the construction services of land owners share post 1.7.2010 in case any part of the payment / development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner. This particular view of liability was not supported in any of the charging sections in the Finance Act 1994.

This clarification was issued after an explanation was inserted to construction service definition from 01.07.2010 which sought to tax the ***sums*** received by builder prior to grant of completion certificate. The intention of introducing this explanation seems to tax the amounts received by developers from customers and not land / development rights received from landowners.

The tribunal in case of *LCS City Makers Pvt. Ltd. Vs. CST [2013 (30) STR 33]* held that construction of residential complex where land owner transferring part of his rights in land to builder is a service liable for tax. The department could also argue that non-monetary consideration is also liable for service tax in terms of service tax valuation provisions. However, as the decision is of the Tribunal, it is still possible to argue that there is no liability on land owners share for reasons discussed in earlier paragraphs.

***SERVICE TAX IMPACT AFTER 01.07.2012***

After introduction of negative list of taxation from 01.07.2012, also developers may argue that this is an exchange of immovable property and excluded from the definition of "service". However, in the decision of SC in case of *L&T Vs. State of Karnataka 2013-TIOL-46-SC-CT-LB* para no.111 it was held that works contract is involved even in case of development agreements with the land lord. Next issue is in respect of valuation or point of taxation covering the transaction in question. There is a discussion on valuation in Education guide issued by CBEC in June 2012 and in circular 151/2/2012-ST which are contradictory. These clarifications have created confusion with respect to valuation which would discuss in subsequent paragraphs.

***Valuation of flats given to land owners***

In the Education guide, it had been clarified that the value of flats given to landowners would be ***land value*** when transferred. ( Date of JD agreement) However, in circular 151/2/2012-ST, it was held that in case of flats given to land owners the value is determinable in terms of Section 67(1)(iii) read with Rule 3(a) of Service Tax (Determination of Value) Rules, 2006, as value of land / development rights in the land may not be ascertainable ordinarily.

Section 67(1) (iii) provides that in case provision of service is for an unascertainable consideration, then such consideration is to be determined in the prescribed manner. Rule 3(a) of the Service tax (Determination of Value) Rules 2006 prescribes that value of such taxable service shall be equivalent to gross amount charged to provide similar service to any other person in the ordinary course of trade. Accordingly, the value of these flats would be equal to the ***value of similar flats*** charged by the builder/developer from other normal customers.

It was also clarified that in case the prices of flats undergo a change over the period of sale (from the first sale of flat in residential complex to last sale of the flat), the value of similar flats as are sold nearer to date on which land is being made available for construction should be used for arriving at the value for the purpose of tax.

The assessee was not clear whether to consider land value or similar flat value for the purpose of payment of service tax. From nowhere, Ministry of Finance- TRU issued an instruction F.No.354/311/2015 on 20.01.2016 to clarify that the Education guide should not be relied as it is not correct and the circular 152/2/2012 would hold good for payment of service tax on land owners share.

It appears that the clarification was issued to generate more revenue as cost of land would be much lesser than the flats constructed. Even otherwise, the circular was issued much prior to 01.07.2012 and the valuation provisions got amended from this date with respect to abatement. It could be contended that the circular is not valid after 01.07.2012. The revenue has tried to give rebirth to circular 151/2/2012 after realising the difference after almost 4 years.

The advisable option for the assessee which could be accepted by the department is to discharge service tax on value of the first flat agreed to be sold. This value would be on all the flats handed over to landowners at any point of time to the extent relating to the construction portion.

***Point of Taxation for payment of service tax***

With respect to point of taxation, circular 152/2/2012 indicates that the valuation is based on date of transfer / conveyance of the finished flats to landowner. However Para 6.2.1 of the Education guide expressed a view that such valuation is to be based on the value of land transferred by landowners to developers as on date of transfer of land.

The date of transfer of land would be usually the date of joint development agreement. Therefore, education guide suggested for payment of service tax considering date of transfer of land whereas circular suggested that the point of taxation is date on which the flats are transferred / conveyed to the landowners by the developers.

For the purpose of service tax, the point of taxation shall be determined as per Rule 3 of Point of taxation Rules. According to this, point of taxation shall be earlier of following:

- Date of issue of invoice for service provided;

***(Contd. in page 7)***

# Entry Tax on Petroleum Products

**Vikram A. Huilgol**, *Practicing Advocate*

Introduction.

On January 6, 2016, in Mysore Polymers & Rubber Products v. Assistant Commissioner of Commercial Taxes, 2016 (84) KLJ 227 (HC.), a Single Judge of the Karnataka High Court quashed reassessment orders passed against the assessee therein and a clarification dated 05.12.2012 issued by the Commissioner of Commercial Taxes ("the Commissioner"), insofar as they held that rubber process oil, a petroleum product used in the manufacture of rubber products, is exigible to tax under the provisions of Karnataka Tax on Entry of Goods Act, 1979 ("KTEG Act"). In essence, the Court, after noting two opinions of expert bodies describing the product in question, held that, since rubber process oil does not find mention under Notification No. FD 11 CET 2002 (I), dated 30.03.2002, the same is not taxable under the KTEG Act. Accordingly, the Court quashed the Commissioner's clarification and the reassessment orders passed against the assessee, insofar as they levied tax on the turnover of rubber process oil purchased and caused entry by it into a local area. The judgment, once again, raises the vexed issue as to whether all petroleum products are taxable under the provisions of the KTEG Act, or only those expressly notified by the State Government. Despite there being a number of judgments of the Karnataka High Court interpreting the Notification dated 30.03.2002, cases still seem to be cropping up on the same issue, thereby clearly evidencing the fact that there is widespread confusion prevailing in the industry as well as the Department. This article briefly analyzes the relevant provisions of the KTEG Act, the notification issued thereunder, and some of the relevant case law, and concludes that the judgment in Mysore Polymers does not, by any means, finally resolve the issue.

Background facts and judgment.

In Mysore Polymers, the assessee was a company engaged in the manufacture and sale of automotive tubes and other rubber products. In the course of its business, it had purchased rubber process oil, which is a derivative of crude oil, for use as an input in the manufacture of rubber products. The assessee had filed its returns, claiming exemption on the turnover of rubber process oil caused entry by it into a local area, as the said product was not notified by the State Government to be taxable under the provisions of the KTEG Act.

The Assistant Commissioner of Commercial Taxes ("ACCT") passed an assessment order, rejecting the exemption claimed by the assessee, and levied tax at the rate of 5% on the value of rubber process oil purchased by the assessee. In arriving at his conclusion, the ACCT relied on the Commissioner's clarification dated 05.12.2012, wherein it was observed that rubber process oil is a lubricating oil and is, therefore, taxable under the provisions of the KTEG Act.

The assessee challenged the reassessment orders, as well as the Commissioner's clarification, in a writ petition before the High Court of Karnataka. The assessee contended that since rubber process oil is not specified to be taxable in the Notification dated 30.03.2002 issued by the State Government, the same is not exigible to tax under the provisions of the KTEG Act. The State contended that rubber process oil is classifiable under Serial No. 1(viii)(e) of the Notification, which reads as "tar and others" and is, therefore, taxable at the rate of 5% under the provisions of the Act.

After referring to a judgment of a Division Bench of the High Court of Karnataka in Carl Bechem Lubricants v. State of Karnataka, (2013) 76 KLJ 374, and two opinions issued by the Indian Oil Corporation and the Indian Rubber Institute, the Court held that rubber process oil cannot be classified under the heading "tar and others" and, therefore, cannot be brought to tax as a petroleum product under the KTEG Act. The Court, accordingly, allowed the writ petition, and quashed the reassessment orders and the Commissioner's clarification.

Discussion.

Section 3(1) of the KTEG Act states that there shall be levied and collected a tax on the entry of any goods specified in the First Schedule into a local area for consumption, use or sale therein at such rates as may be specified by the State Government.

Entry 67 of the First Schedule to the KTEG Act reads as follows:

> *"Petroleum products, that is to say, petrol, diesel crude oil, lubricating oil, transformer oil, brake or clutch fluid, bitumen (asphalt), tar and others, but excluding aviation fuel, liquid petroleum gas (LPG), kerosene and naphtha for use in the manufacture of textiles."*

The State Government issued Notification No. FD 11 CET 2002 (I), specifying the rates of tax at which various goods would be exigible to tax. Serial No. 1 of the said notification relates to petroleum products, and clause (viii) of the said serial number reads as follows:

*"Petroleum products, that is to say:*

*(a) Lubricating Oil;*

*(b) Transformer Oil;*

*(c) Brake fluid or clutch fluid;*

*(d) Bitumen (asphalt);*

*(e) Tar and others*

*Excluding Liquefied Petroleum Gas (LPG), Aviation Fuel and Kerosene."*

As per the said notification, those petroleum products that fall within the scope of Serial No. 1(viii) are taxable under the provisions of the KTEG Act at the rate of 5%. Therefore, if rubber process oil can be said to fall within the ambit and scope of Sl. No. 1(viii) of Notification No. FD 11 CET 2002 (I), dated 30.03.2002, the same would be taxable at the rate of 5% under the provisions of the KTEG Act.

In Hyva India Pvt. Ltd. v. Additional Commissioner of Commercial Taxes, (2012) 74 KLJ 68, the assessee therein contended that hydraulic oil is not taxable under the provisions of the KTEG Act since it has not been specifically mentioned under Serial No. 1(viii) of Notification No. FD 11 CET 2002 (I). The assessee further contented that hydraulic oil does not fall within the scope of the expression "tar and others" found in Serial No. 1(viii)(e) of the Notification, as the said expression must be read only in conjunction with the preceding word "tar" to mean that only products that are in the nature of or similar to tar are taxable. A Division Bench of the High Court of Karnataka rejected the assessee's contentions and held that the words "and others" in Serial No. 1(viii)(e) of Notification No. FD 11 CET 2002 (I) would refer to all other petroleum products that are not specifically mentioned under the said serial number, and not just to those products that are in the nature of or similar to tar. Therefore, as per the said judgment, all petroleum products, including those that do not find mention under Serial No. 1(viii), are exigible to tax under the provisions of the KTEG Act. The High Court, accordingly, held that hydraulic oil was taxable at the rate of 5% under the KTEG Act, despite the fact that hydraulic oil was not specifically mentioned in Serial No. 1(viii).

In Hyva India, the High Court relied extensively on the judgment of the Supreme Court in Indian Aluminium Co. Ltd. v. Assistant Commissioner of Commercial Taxes, (2001) 121 STC 510, wherein the Supreme Court held that furnace oil falls within the ambit of Entry 67 of the First Schedule to the KTEG Act despite not being specifically mentioned therein. In Indian Aluminium, the Supreme Court interpreted the wording of Entry 67 of the First Schedule to the KTEG Act and held that the use of the words "and others" in Entry 67 refers to those petroleum products that are not specified under the said entry. The Supreme Court also referred to the exclusionary portion of Entry 67 and held that if petroleum products other than those mentioned under the Entry were not included within the scope of the said Entry, there would have been no need to specifically exclude petroleum products such as aviation fuel, liquid petroleum gas, kerosene and naphtha for use in the manufacture of fertilizers. The following observations of the Supreme Court succinctly explain why it was held that petroleum products other than those specified in Entry 67 also fall within the scope of the Entry:

> *"The very fact that there is an exclusion clause, means that but for the said exclusion, aviation fuel, LPG, etc., would be included in the said entries and as they are not specifically mentioned they would be covered by reason of the words 'and others.'"*

After the High Court's judgment in Hyva India, in Carl Bechem, a Division Bench of the High Court of Karnataka held that IPOL Cylinder Oil, which was used as a base oil in the manufacture of lubricating oils, was not taxable under the provisions of the KTEG Act as the said product does not specifically find mention under Serial No. 1(viii) of Notification No. FD 11 CET 2002 (I). The said judgment of the High Court supports the contention that only those petroleum products specifically mentioned under Serial No. 1(viii) of Notification No. FD 11 CET 2002 (I) are exigible to entry tax, and that all other petroleum products cannot be brought to tax under the provisions of the KTEG Act. However, in Carl Bechem, the High Court did not refer to its prior judgment in Hyva India, nor did it refer to the judgment of the Supreme Court in Indian Aluminium.

In my opinion, the judgment of the High Court in Hyva India, following the Supreme Court's judgment in Indian Aluminium, lays down the correct law. The products mentioned in Serial No. 1 of Notification No. FD 11 CET 2002 (I) are the same as those mentioned in Entry 67 of the First Schedule to the KTEG Act. Therefore, the High Court in Hyva India rightly followed the Supreme Court's binding judgment in Indian Aluminium for the purpose of determining whether petroleum products other than those specifically mentioned under Serial Number 1(viii) are taxable under the KTEG Act.

Moreover, Serial number 1(viii) also contains an exclusionary clause that is similar to that in Entry 67. Applying the Supreme Court's reasoning in Indian Aluminium, there would have been no need to exclude products such as LPG, aviation fuel and kerosene that were not specifically mentioned under the serial number, if those products were not taxable in the first place. Furthermore, the contention that the words "and others" in Serial No. 1(viii)(e) of Notification No. FD 11 CET 2002 (I) must be read only with the preceding word "tar," to include only those petroleum products that are in the nature of or similar to tar, was specifically rejected by the High Court in Hyva India in view of the Supreme Court's judgment in Indian Aluminium.

Conclusion.

In Mysore Polymers, like in Carl Bechem, the Court did not refer to the judgments in Indian Aluminium or Hyva India. It is likely that the Court's decision would have been different if the above judgments had been brought to its notice, and the Court would have held that rubber process oil falls within the scope of Serial No. 1(viii)(e) of the Notification dated 30.03.2002. Since the above mentioned judgments have not been referred to in Mysore Polymers, the Court's order in the said case would, in my opinion, not be of much precedential value.

Therefore, it is important that the ambiguity on this issue be put to rest quickly by the Courts. The conflicting judgments of Hyva India and Carl Bechem are already causing considerable confusion in the industry, and the earlier the Court clarifies the correct position, one way or another, the better it would be for both the industry as well as the Department.

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

## Service Tax Liability on Land Owners Share

***(Contd. from page 4)***

- If invoice is not issued within 30 days of completion of provision of service, then it is the date of completion of provision of service;
- If payment is received before date of issue of invoice or completion of service, then it is the date of receipt of payment.

In case of transactions between landlords and developer, the system of issue of invoices would not be there. Therefore, out of the three events listed date of receipt of consideration or date of completion of service would be relevant. Based on this it could be argued that point of taxation is the date on which development rights are received by him as developer gets land. A view could be taken that service tax is payable on guidance or market value of the land which is the consideration received. This view may not be accepted by the revenue due to their reliance on the circulars. It maybe noted that a circular cannot lay down the law. If not in line with the law it is not legally valid.

Circular no.151/2/2012-ST clarifies that point of tax is at the time when the possession or right in the property of the flats are transferred to land owner by entering into a conveyance deed or similar instrument (Ex: Allotment letter). Therefore, it is ideal to pay the service tax at the time of transfer of development rights in flats. In case any flats are sold in between by the landowner, then the service tax can be paid proportionately considering such agreement to sell as point of taxation. For flats handed over after construction the first sale value could be considered in line with the circulars.

**Conclusion:** The intention of the revenue seems to be to collect as much service tax on landowners share as possible. It would be prudent to discharge the service tax at least for agreements entered into after 01.07.2012 onwards. The developers are advised to bring this aspect (issue) to the owners to be able collect the service tax on their share and pay to exchequer. The land owners selling before completion of construction can also recover the tax from the buyers of their share. They can adjust the service tax collected against the service tax as set out in the developers bill while making the payment to the exchequer. The tax could be paid under protest intimating the department with a hope that some relief would be granted in future due to court rulings.

*Authors can be reached on e-mail:*
*madhukar@hiregange.com or mahadev@hiregange.com*

## Congratulations

**CA. T. R. Anjanappa**
Past President, KSCAA
has been nominated as member on
Zonal Railway Users Consultative
Committee (ZRUCC)
of South Western Railway,
Ministry of Railways, Govt of India.

# Karnataka Commercial Tax Updates 2016

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

**1. KARNATAKA VAT ACT 2003**

I) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka hereby **exempts** with effect from 01.4.2016 upto 31.3.2017 the tax payable on the sale of the following goods namely paddy and Rice, wheat, pulses, Flour and soji of rice and wheat, Maida of wheat and Ragi Rice (Processed Ragi).

II) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka hereby **exempts** with effect from 01.4.2016 the tax payable on the sale of handmade paper, handmade paper board including and handmade paper products manufactured and sold by a dealer recognized as Khadi and Village Industry by the Khadi and Village industries Commission or the Karnataka Khadi and Village Industries Board, Aluminum house hold utensils other than pressure cooker and cutlery and Jowar Roti and Ragi Roti.

III) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka **exempts** with effect from 01.4.2016 the tax payable by a dealer under the said Act on sale of crude oil as specified in clause (ii-c) of section 14 of CST Act 1956.

IV) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka **reduces** with effect from the first day of April 2016, the tax payable by a dealer under the said Act to Five and Half percent on the sale of the following goods namely

- Chutnipudi prepared from groundnut, nigar seeds, copra, Bengal gram, garlic, flax seeds and fried gram.
- office file made of paper and paper board
- Adult diapers
- hand operated rubber sheet making machine
- Set top boxes for viewing television content
- Surgical gown, coat, mask, cap and drapes of single use made of non-woven fabrics
- Helmets
- LED Bulbs

V) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 the following are considered as **industrial inputs** and are liable to tax at 5.5%

- Nickel bars, rods, profiles and wire falling under HSN Code 7505
- Nickel plates, sheets, strip and foil falling under HSN code 7506
- Titanium and articles thereof including waste and scrap

VI) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka substitutes the words and figures of Notification No FD 229 CSL 2013 as Multimedia speakers with price not exceeding Rs. 1000/- per set as Multimedia speakers. Therefore Multimedia speakers without any monetary limit will be liable to tax.

VII) Vide Notification No FD 34 CSL 2016 dated 31.03.2016, the Government of Karnataka specifies that with effect from 01.4.2016, input tax paid on purchase of cigarettes in excess of two percent shall not be deducted in calculating the net tax payable in respect of interstate sale of Cigarettes against C form.

**KARNATAKA VAT AMENDMENT BILL 2016 ((L.A. Bill No. 12 of 2016)**

This Act may be called the Karnataka Value Added Tax (Amendment) Act, 2016. It shall come into force with effect from the First day of April, 2016.

**I) Amendment of Section 10.–** In the Karnataka Value Added Tax Act, 2003 (Karnataka Act 32 of 2004) (hereinafter referred to as the principal Act), in section 10-

**Prior to Amendment of Act**

**Section 10(3)**: Subject to input tax restriction specified in Sections 11, 12,14, 17,18,and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and ***relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods and*** shall be accounted for in accordance with the provisions of this Act.

**After Amendment of Act**

Section 10(3) Subject to input tax restriction specified in Sections 11, 12,14, 17,18,and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.

***"Provided that, a registered dealer while calculating the net tax payable on or after first day of April 2015 may claim input tax 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."***

**After Amendment**

**Section 10(6)**: Notwithstanding anything contained in this Act, input tax deducted by a registered dealer to calculate net tax payable is provisional to a dealer who fails to furnish or furnishes incorrect and incomplete particulars for preparation of the return in the prescribed form electronically through internet in the manner specified in the notification issued by the Commissioner under first proviso to section 35 and the jurisdictional Local VAT Officer or VAT sub-officer shall assess such dealer for such tax period by disallowing input tax claimed by him and issue demand notice:

Provided that, where an assessment has been made under this sub-section and the dealer subsequently furnishes particulars for preparation of the return in the prescribed form or furnishes correct and complete particulars for preparation of the return electronically through internet in the manner specified in the notification for the tax period to which assessment relates, the jurisdictional Local VAT Officer or VAT sub-officer shall withdraw the assessment but the dealer shall be liable to penalty as applicable under sub-section (3-A) of section 72".

**II) Section 31: Accounts.**

**After Amendment**

The following proviso shall be inserted, namely:- "Provided further that the dealers so required to submit a copy of the **audited statement of accounts** and prescribed documents in the prescribed manner shall submit them **electronically** through the website notified by the Commissioner."

**III) Section 35: Returns**- In section 35 of the principal Act, in the first proviso to sub-section (1), for the words "or" the words "and" shall be deemed to have been substituted with effect from the first day of April 2010.

**Prior to Amendment**

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

**After Amendment**

Provided that the specified class of dealers as may be notified by the Commissioner shall furnish particulars for preparation of the return in the prescribed form **and** submit the return in the prescribed form electronically through internet in the manner specified in the said Notification.

**IV) Section 38: Assessment of tax**

**Prior to Amendment**

Section 38(2): Where a registered dealer fails to furnish his monthly or final return on or before the date provided in this Act or the rules made **thereunder,** the prescribed Authority shall issue an assessment to the registered dealer to the best of its judgement and the tax assessed shall be paid within ten days from the date of service if such assessment on the dealer.

**After Amendment**

Section 38(2): Where a registered dealer fails to furnish his monthly or final return on or before the date provided in this Act or ***the return furnished is incorrect or incomplete,*** the prescribed Authority shall issue an assessment to the registered dealer to the best of its judgement and the tax assessed shall be paid within ten days from the date of service if such assessment on the dealer.

**V) Section 72: Penalties relating to returns and assessment**

**After Amendment**

Section 72(2-A): A dealer who for any prescribed tax period furnishes a revised return which understates his liability to tax or overstates his entitlement to a tax credit by more than five per cent of his actual liability to tax, or his actual tax credit, as the case may be shall after being given the opportunity of showing cause in writing against the imposition of a penalty, be liable to a penalty equal to ten per cent of the amount of such tax under or overstated.

**Explanation:** Notwithstanding anything contained in this Act, for the purpose of this section, revised return means a return filed under clause (a) and clause (b) of sub-section (4) of section 35."

**After Amendment**

Section 72 (3-B). A dealer who fails to submit the copy of the audited statement of accounts and prescribed documents as prescribed in the proviso to sub-section (4) of section 31

as informed in the notice issued to him shall be liable to a penalty of fifty rupees for each day of default.

**VI) Amendment of Fourth Schedule**

New Entry 7 of the Fourth Schedule is inserted as "the Aerated and carbonated non-alcoholic beverages whether or not containing sugar or other sweetening matter or flavor or any other additive including soft drinks and soft drink concentrates (whether in sealed container or otherwise)" liable to tax at 20%

**VII) Amendment of Sixth schedule**

**Before Amendment in Serial Number 4 of the Sixth Schedule at 5.5%**

Description of works contract: Fabrication and erection of structural works including Fabrication, supply and erection of iron trusses, purlines, etc

**After Amendment in Serial Number 4 of the Sixth Schedule at 5.5%**

Description of works contract: "Fabrication and erection of structural works of iron and steel including fabrication, supply and erection of iron trusses, purlines and the like."

**2. CENTRAL SALES TAX ACT 1956**

I) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka reduces with effect from the first day of April 2016, the tax payable by the dealer under the said Act to **two percent in respect of Cotton** as specified in Clause (ii) of section 14 of CST Act 1956 . ("Section 14 (ii) - cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste")

II) Vide Notification No FD 34 CSL 2016 dated 31.03.2016, the Government of Karnataka **rescinds the following Notifications** which were issued prior to introduction of VAT which provided for tax at 1% on interstate sales (FD 177 CSL 2003(2), dated 08.7.2003, FD 55 CSL 2004(22) dated 31.7.2004 and FD 91 CSL 2005(2) dated 31.3.2005)

**3. KARNATAKA SALES TAX ACT 1957**

I) Vide Notification No FD 34 CSL 2016, the Government of Karnataka **increases** the tax payable under section 5 of the Act and with effect from 01.4.2016 as

Aviation Fuel will be liable to tax at Twenty Eight Percent (28%)

Motor Spirits specified in item (ii) of serial Number 12 of Part M of Second Schedule liable to tax at Nineteen Percent (19%).

**KARNATAKA TAXATION AMENDMENT BILL 2016 ((L.A. Bill No. 12 of 2016)**

This Act may be called the Karnataka Taxation Laws (Amendment) Act, 2016. It shall come into force with effect from First day of April 2016.

**4. Karnataka Entertainment Tax Act 1958**

**Before Amendment**

**4-G. Tax on Multi System Operator and Direct to Home service provider.**- Notwithstanding anything contained in Sections 4-C and 4-D, there shall be levied and collected a tax at the rate of **six per cent** on the amounts received or receivable by a Multi System Operator towards distributing satellite television signals, communication network, including production and transmission of programmes and packages and by a Direct to Home service provider towards providing television signals under the Direct to Home Scheme

**After Amendment**

**4-G. Tax on Multi System Operator and Direct to Home service provider.**- Notwithstanding anything contained in Sections 4-C and 4-D, there shall be levied and collected a tax at the rate of **ten** per cent on the amounts received or receivable by a Multi System Operator towards distributing satellite television signals, communication network, including production and transmission of programmes and packages and by a Direct to Home service provider towards providing television signals under the Direct to Home Scheme:

**5. Karnataka Tax on Professions, Trades, Callings and Employments At, 1976:**

**Registration and Enrolment. -**

**Before Amendment**

(3) Every employer or person required to obtain a certificate of registration or enrolment shall, within ninety days from the date of commencement of this Act or, if he was not engaged in any profession, trade, calling or employment on that date, within thirty days from the date of commencement of his profession, trade calling or employment, or in respect of a person referred to in sub-section(2) within thirty days of his becoming liable to pay tax at a rate higher or lower than the one mentioned in his certificate of enrolment, apply for a certificate of registration or enrolment, or revised certificate of enrolment, as the case may be, to the assessing authority in the prescribed form and the assessing authority shall, after such inquiry as it may deem fit **within thirty days** of the receipt of the application (which period in the first year from the commencement of this Act shall be extended to ninety days), if the application is in order, grant him such certificate

**After Amendment**

(3) Every employer or person required to obtain a certificate of registration or enrolment shall, within ninety days from the date of commencement of this Act or, if he was not engaged in any profession, trade, calling or employment on that date, within thirty days from the date of commencement of his profession, trade calling or employment, or in respect of a person referred to in sub-section(2) within thirty days of his becoming liable to pay tax at a rate higher or lower than the one mentioned in his certificate of enrolment, apply for a certificate of registration or enrolment, or revised certificate of enrolment, as the case may be, to the assessing authority in the prescribed form and the assessing authority shall, after such inquiry as it may deem fit **within three days** of the receipt of the application (which period in the first year from the commencement of this Act shall be extended to ninety days), if the application is in order, grant him such certificate

**6. Karnataka Tax on Luxuries Act, 1979 (Karnataka Act 22 of 1979).-**

**Before Amendment**

**3-E. Levy and collection of tax on luxury provided in a hospital.-(1)** There shall be levied and collected a tax at the rate of eight percent on the charges collected for luxuries provided in a hospital in a room such as accommodation, air conditioning, telephone, telephone calls, television, radio, music, extra beds and the **like where** such charges are more than one thousand rupees per day per room.

**After Amendment**

**3-E. Levy and collection of tax on luxury provided in a hospital.-(1)** There shall be levied and collected a tax at the rate of eight percent on the charges collected for luxuries provided in a hospital in a room such as accommodation, air conditioning, telephone, telephone calls, television, radio, music, extra beds and the **like other than facilities provide in a Intensive Care Unit(ICU)"** where such charges are more than one thousand rupees per day per room.

**Before Amendment**

**7-A. Assessment of escaped tax. –** (1) Where for any reason the whole or any part of the charges for lodging, charges for luxuries provided in a hotel for residents or others, charges for luxuries provided in a **marriage hall has escaped assessment** to tax or has been assessed at a lower rate than the rate at which it is assessable, the Luxury Tax Officer may, at any time within a period of five years from the expiry of the year to which the tax relates, proceed to assess to the best of his judgment the tax payable on such charges after issuing a notice to the proprietor and after making such enquiry as he considers necessary.

**After Amendment**

**7-A. Assessment of escaped tax. –** (1) Where for any reason the whole or any part of the charges for lodging, charges for luxuries provided in a hotel for residents or others, charges for luxuries provided in a **marriage hall or charges for luxuries provided in a hospital or charges for luxuries provided in a club has escaped assessment** to tax or has been assessed at a lower rate than the rate at which it is assessable, the Luxury Tax Officer may, at any time within a period of five years from the expiry of the year to which the tax relates, proceed to assess to the best of his judgment the tax payable on such charges after issuing a notice to the proprietor and after making such enquiry as he considers necessary.

**7. Karnataka Tax on Entry of Goods Act, 1979 (Karnataka Act 27 of 1979).-**

**Section 13. Appeals**

**Before Amendment**

**Section 13(3)**(a) No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of the **tax and penalty** not disputed in the appeal.

**After Amendment**

**Section 13(3)**(a) No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of the **tax and other amount** not disputed in the appeal.

**Before Amendment**

(b) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the appellate authority may, in its discretion, **stay payment of one half of tax,** if the appellant makes payment of the other half of the tax along with the prescribed form of appeal:

**After Amendment**

(b) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the appellate authority may, in its discretion, **stay payment of seventy percent of tax and other amount**, if the appellant ***makes payment of the balance thirty percent of the tax and other amount*** along with the prescribed form of appeal:

**Before Amendment**

Provided further that where any application made by an applicant for staying proceedings of recovery of any tax or other amount has not been disposed of by the Appellate Authority within a period of thirty days from the date of such application, it shall be deemed that the Appellate Authority has made an order staying proceedings for recovery of such tax or other amount subject to payment of one half of the tax disputed and furnishing of sufficient security to the satisfaction of the assessing authority in regard to the other half of such tax or amount within a further period of fifteen days:

**After Amendment**

Provided further that where any application made by an applicant for staying proceedings of recovery of any tax or other amount has not been disposed of by the Appellate Authority within a period of thirty days from the date of such application, it shall be deemed that the Appellate Authority has made an order staying proceedings for recovery of such tax and other amount subject to payment of seventy percent of tax and other amount and furnishing of sufficient security to the satisfaction of the assessing authority in regard to the seventy percent of such tax and amount within a further period of fifteen days:

**Before Amendment**

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

**After Amendment**

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

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

**Section 14: Appeal to Appellate Tribunal**

**Before Amendment**

(3)The appeal or the memorandum of cross objections shall be in the prescribed form, shall be verified in the prescribed manner, and in the case of an appeal preferred by any person other than an officer empowered by the State Government under sub-section (1) shall be accompanied by proof of payment of **one half of tax or other amount disputed** and also a fee equal to two per cent of the amount of assessment objected to, provided that the sum payable in no case be less than two hundred rupees or more than one thousand rupees.

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

Provided that the Appellate Tribunal may, in its discretion, stay payment of **one half of tax or other amount disputed**, if the appellant makes payment of the **other half of the tax or other amount disputed along with the prescribed form of appeal:**

Provided further that the Appellate Tribunal shall dispose of such appeal within a period of one hundred eighty days from the date of the order staying proceedings of recovery of one half of tax or other amount and, it such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said tax or other amount.

**After Amendment**

(3)The appeal or the memorandum of cross objections shall be in the prescribed form, shall be verified in the prescribed manner, and in the case of an appeal preferred by any person other than an officer empowered by the State Government under sub-section (1) shall be accompanied by proof of payment of **thirty per cent of the tax and other amount** disputed and also a fee equal to two per cent of the amount of assessment objected to, provided that the sum payable in no case be less than two hundred rupees or more than one thousand rupees.

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

Provided that the Appellate Tribunal may, in its discretion, **stay payment of seventy percent of tax and other amount** disputed, if the appellant makes payment of the **thirty per cent of the tax and other amount** disputed along with the prescribed form of appeal:

Provided further that the Appellate Tribunal shall dispose of such appeal within a period of one hundred eighty days from the date of the order staying proceedings of recovery of seventy percent of tax and other amount and, it such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said tax and other amount.

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

# Indirect Taxes Update – March 2016

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

**A. Notifications and Circulars**

*a)* *Notifications:*

*i)* *Cenvat Credit Rules, 2004:* Rule 6(3) which provides for payment of 6% of value of exempted goods or 7% of value of exempted services, in case where the inputs or input service or both are used for both taxable and exempted activities has been amended.

In terms of the amendment, such payment of 6% or 7% as the case may be is restricted to opening balance of the credit and credit availed (both input and input service) during the relevant period (period for which the reversal is being done).

Therefore, in case where assessee opts to pay the above percentages of exempted turnover instead of opting for reversal on the basis of the formula prescribed under Rule 6(3A), the reversal / payment is restricted to the credit availed during the period. [Notification No. 23/2016(CE NT) dt. 01-04-2016]

*ii)* *Amendment to Form ST-3*: Form ST-3 has been amended to provide for reporting of collection and remittances of Swachh Bharat Cess [Notification No.20/2016-ST dt. 08.03.2016]

*iii)* *Amendment to Rule 7 of Point of Taxation Rules,2011:* Rule 7 of Point of Taxation Rules, 2011 which provides point of taxation for services covered under reverse charge and joint charge would be date of payment of the service charges. The amendment to said rule w.e.f. 30.03.2016is as below:

Where there is a change in the liability or extent of liability of a person liable to pay tax under reverse charge / joint charge and where service is already provided and invoice is also issued before such change, the point of taxation shall be the date of issuance of invoice. [Notification No.21/2016-ST dt. 30.03.2016]

**B. Important Decisions**

**1. Shappoorji Paloonji and Company Pvt Ltd. Vs. CCE, 2016-TIOL-556-HC-PATNA-ST:**

Issue before the High Court was whether construction of academic building project for Indian Institute of Technology (IIT) would be liable to service tax?

The High Court analysing the provisions of the entry 12 of Notification No. 25 /2012 ST dated 20.06.2012 read with the definition of 'Governmental Authority', observed that the services of construction of building of IIT would be covered under the notification and exempt from service tax. The Court observed that in terms of the definition of Governmental Authority, as substituted vide amendment dated 30.1.2014, any authority or board or any other body set up by an Act of Parliament or State Legislature is a Governmental Authority. The Conditions of 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution is not applicable to such entities.

**2. Union of India Vs. Hamdard(Waqf) Laboratories, 2016-TIOL-21-SC-CX**

**Background:** The issue before the Hon'ble Supreme Court was whether the interest on delayed refund shall be computed from date of refund application or from the date of sanction of the refund in terms of Section 11BB of Central Excise Act,

Assessee, preferred a claim of refund of the excess duties paid by them on 25.08.1999, in terms of the order of the Supreme Court. Department raised certain queries relating to the claim vide letter dated 27.09.199 which was answered by the assessee on 30.09.1999. Refund cheque was issued on 15.11.2000. The assessee filed a writ petition before High Court seeking direction to the department to pay interest for delayed payment of refund in terms of Section 11BB, which petition was allowed and against the revenue preferred appeal.

**Held**: The Hon'ble Supreme Court relied upon the decision of the same Court in the case of Ranbaxy Laboratories Ltd. Vs. CCE, 2011-TIOL-105-SC-CX and held that it is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and

reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. Therefore, it was held that, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act.

**3. Ramala Sahkari Chini Mills Ltd, UP Vs. CCE, 2016-TIOL-20-SC-CX-LB:**

**Background:** While interpreting the definition of phrase 'inputs' [Rule 2(g) of Cenvat Credit Rules, 2002], the Supreme Court in the case of Maruti Suzuki reported in 2009 (240) E.L.T. 641 (S.C.) held that the inputs could be divided into three parts, namely (i) specific part,(ii) inclusive part and (iii) place of use and observed that none of the categories in the inclusive part of the definition would constitute relevant consideration unless the crucial requirement of being "used in or in relation to the manufacture" stands complied with.

However, while dealing with the eligibility to avail credit on welding electrodes used for maintenance of machinery used in manufacture of final products, the Supreme Court doubted the above decision referred the matter to Larger Bench on the basis of the observation that the word "include" should be given a wide interpretation as by employing the said word, the legislature intends to bring in, by legal fiction, something within the accepted connotation of the substantive part and it appears that by employing the phrase "and includes", legislature did not intend to impart a restricted meaning to the definition of "inputs".

**Present decision**: Agreeing with the order of the referral bench, the Court held that word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. In this connection, the Hon'ble Court relied upon the decision in the case of Regional Director, Employees' State Insurance Corporation vs. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr. [(1991) 3 SCC 617].

[Note: To summarize, the views of the Court in the case of Maruti Suzuki is no longer applicable and the credit cannot be restricted to the three classes of cases only as mentioned in Maruti Suzuki's judgement.]

**4. CCE vs. Federal Bank Limited., 2016-TIOL-26-SC-ST**

Issue before the Hon'ble Supreme Court was whether the services provided by the banks, such as collection of telephone bills, collection of insurance premium on behalf of the client companies are liable to service tax under the category "business auxiliary service" as defined under Section 65 (19) of the Finance Act, 1994.

The High Court had agreed with the view of the Tribunal and had dismissed the appeal by the department by holding that the heading Banking and Other Financial services' covers all charging services rendered by the Banks and hence, by express provisions in the same very section, cash management services stood excluded from the purview of service tax. On account of such exclusion, the authorities cannot levy service tax by indirect method of charging the same service under the head "business auxiliary service". The Supreme Court agreed with the views of the High Court and added that Section 65A of the Finance Act 1994 would also support the High Court view.

**5. M/s Tower Vision India Pvt Ltd Vs. CCE, 2016-TIOL-539-CESTAT-DEL-LB**

**Issue:** Issue before the Larger Bench of the CESTAT was whether assessee who is engaged in providing passive infrastructure services to Telecom companies (allowing use of Telecom Towers and shelters), could claim credit of cenvat paid on the goods used in erecting these towers and shelters. The assessee was paying service tax on the output services.

**Held**: The Larger Bench relied upon the decision of the High Court in the case of Bharti Airtel Ltd. vs. CCE, Pune - III - 2014-TIOL-1452-HC-MUM-ST, wherein it was held that credit on goods used for erection of telecom towers and shelter by Telecommunication Companies would not be eligible as these would result in erection of immovable property. Larger Bench applied the said ratio to the service provider providing infrastructure support to telecom companies and observed that the inputs which suffered duty like MS angles and pre-fabricated shelters, per se, were not used for providing output service. In other words there is a tower and cabin structure erected and embedded before such support service could be provided to the telecom operators. The Larger Bench observed that where the credit on these goods were not eligible when used by the Telecom companies themselves to erect the towers, it cannot be allowed where an intermediary company comes in between to create such structure and make it available to the Telecom Companies.

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

# IN THE HIGH COURT OF KARNATAKA AT BENGALURU

## DATED THIS THE 29TH DAY OF MARCH 2016

## BEFORE:

## THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

## WRIT PETITION Nos. 2026-2031 OF 2015 (CS-RES)

BETWEEN:

1. Karnataka State Chartered Accountants Association, Bangalore, No.7/8, 2nd Floor, Shoukath Building, SJP Road, Bangalore 560 002, Represented by its President, Sri. Raveendra S Kore.

2. Sri. Raveendra S Kore, Son of Sangappa Kore, Aged 36 years, Residing at Flat No.203, 1st Floor, Maruthi Enclave, Sy.No.205/94/2, Balaji Layout, Mallathahalli, Nagarabhavi, Bangalore 560 056.

3. Smt. Tara Bevinje, Daughter of B.S.Kakkillaya, Aged 58 years, Residing at Flat No.T 8 and 9, Srivarthe Prasiddi Apartments, Bikasipura Main Road, Yelachenahalli, Bangalore 560 062.

4. Sri. H.M.Basavaraja, Son of H.M.Panchaksharaiah, Aged 59 years, Residing at No.1287/68, 4th Cross, Ashokanagar, BSK I Stage, Bangalore 560 050.

5. Sri. B.V.Maddanaswamy, Son of B.M.Vrushabhendrappa, Aged 60 years, Residing at No.145, 10th Main, B.C.C.Layout, Vijayanagar, Bangalore 560 040.

6. Sri. Sathisha .R, Son of Late Rajanna, Aged 38 years, Residing at No.277, Hasitat House, Unit 201, 1st Floor, 1st Main, Chamarajpet, Bangalore 560 018.

...PETITIONERS

(By Shri M.V.Sheshachala, Senior Advocate for Shri Aravind V Chavan, Advocate)

AND:

1. The State of Karnataka,
   Department of Co-operation,
   VI Floor, M.S.Building,
   Bangalore 560 001.
   (represented by its Secretary).

2. The State of Karnataka,
   Department of Parliamentary Affairs,
   M.S.Building,
   Bangalore 560 001.
   Represented by its Secretary.

3. The Registrar of Co-operative Societies,
   No.1, Ali Asker Road,
   Vasanthnagar,
   Bangalore 560 052.

4. The Director of Co-operative Audit,
   Karnataka, No.17,
   Jayanivas, Shankarmutt Road,
   Basavanagudi,
   Bangalore 560 004.

5. Karnataka State Cost Accountants
   Association, Bangalore,
   Represented by its President,
   Mr. Vishwanath Bhat.

6. Suresh R Gunjalli,
   Cost Accountant,
   No.10, 1st Floor,
   Vinayaka Apartments,
   Vinayaka Layout,
   Basaveshwaranagar,
   Bangalore 560 079.

7. Girish .K,
   Cost Accountant,
   No.36, Chatura Homes,
   2nd Main, Meenakshinagar,
   Near Krishna Kalyana Mantapa,
   Basaveshwaranagara,
   Bangalore 560 079.

8. B. Jayendra Naik,
   Cost Accountant,
   No.101, Siri Meadows Apartments,
   II Main, II Stage,
   Vasantha Vallabha Nagar,
   Vasanthapura,
   Bengaluru 560 061.

9. Hari T Devadiga,
   Cost Accountant,
   No.28, Old No.40,
   1st Floor, between 3rd and 4th Cross,
   2nd Main Road, Chamarajpet,
   Bangalore 560 018.

10. T.K. Jagannathan,
    Cost Accountant,
    No.50, 5th Cross,
    2nd Main Road,
    Chamarajpet,
    Bangalore 560 018.

[respondent Nos.5 to 10 are
Impleaded vide court order


Dated 8.1.2016]

... RESPONDENTS

(By Shri A.S.Ponnanna, Additional Advocate General along with Smt. Pramodhini Kishan, Government Pleader for Respondent Nos.1 to 4;
Shri Udaya Holla, Senior Advocate for Shri Vivek Holla, Advocate for Respondent Nos.5 to 10)

*****

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declare clauses (v)(a) and (b) of Section 26 of the Karnataka Co-operative Societies (Amendment) Act, 2014, Act No.35 of 2014 i.e., amending Section 63 of the Karnataka Co-operative Societies Act, 1959, dated 6.9.2014 produced Annexure-G by the respondents to include auditing by Cost Accountants or Cost Accountants Firm, as null and void and ultra-virus the Constitution of India and Central Legislatures and etc;

These Writ Petitions having been heard and reserved on 29.2.2016 and coming on for pronouncement of Orders this day, the Court delivered the following:-

**ORDER**

The facts, as stated by the petitioners, are as follows:-

The first petitioner is an Association of Chartered Accountants, registered under the Societies Registration Act, 1860. Petitioners no.2 to 6 are said to be practising Chartered Accountants. The petitioners seek to challenge the amendment to Section 63 of the Karnataka Co-operative Societies Act, 1959 (Hereinafter referred to as the 'KCS Act', for brevity), whereby auditing of accounts by Cost Accountants of a firm of Cost Accountants is permitted.

2. It is asserted that the KCS Act was enacted by the State Legislature as legislation in respect of the subject 'co-operative societies', which finds place under Entry 32 of List II of the Seventh Schedule to the Constitution of India.

With the 97th Constitutional Amendment Act, 2011, having received the assent of the President of India, and with the introduction of Articles 243ZH to 243ZT, inter- alia, required the State legislatures to introduce a law with a mandate that every co-operative society shall maintain accounts and audit such accounts in each financial year and such audit was to be done by an Auditor or an Auditing firm.

Consequently, the KCS Act was sought to be amended by the Karnataka Amendment Act no.3 of 2013. Section 63 was amended to make auditing of the accounts of co-operative societies compulsory. The auditing was to be assigned to departmental auditors or to Chartered Accountants. This was made to bring the provision in consonance with the 97th Amendment to the Constitution.

It is the case of the petitioners that succumbing to the pressure of lobbying and political pressure, brought by the members of the Cost Accountants fraternity, the State Legislature sought to bring a further amendment to Section 63 of the KCS Act, by Act no. 35 of 2014. By the said amendment, the definition of 'auditor' was enlarged to include a Cost Accountant, within the meaning of the Cost and Works Accountants Act, 1959. This action on the part of the legislature, according to the petitioners, permitted Cost Accountants to do the work of auditing thereby encroaching on the profession of Chartered Accountants, which would run counter to the 97th Amendment as well as the Chartered Accountants Act, 1949.

The petitioners contend that the State legislature has overlooked the classification of two distinct classes of professionals. A Chartered Accountant is governed by the Chartered Accountants Act, 1949, whereas a Cost Accountant is governed by the Cost and Works Accountant Act, 1959. The petitioners have depicted the distinction between the two professions, in a tabular form, thus :

| CHARTERED ACCOUNTANT | COST ACCOUNTANT |
|---|---|
| Thorough knowledge of every aspect of accounting, auditing and taxation | Knowledge of cost and financial management to ensure a fine balance between expenditures and available recourses |
| CAs are involved in core accounting work of an organisation | Cost accountants are involved in the costing part of financial transactions |
| CAs analyse risk and design efficient financial system | Cost accountants assess the feasibility of projects vis-à-vis available funds |
| Taxation and auditing are main duties of a Chartered Accountant | Cost management and designing cost control methods are main duties of a Cost Accountant |

Attention is drawn to the provisions of the Companies Act, 1956, The Income Tax Act,1961 and the Multi-State Co-operative Societies Act, 2002, where under there are special references to the role exclusively conferred on the Chartered Accountants, all of which fortify the stand of the petitioners that the State legislature could not therefore permit the Cost Accountants to entrench upon the profession of the Chartered Accountants, which is the direct consequence of the impugned amendment.

It is in this vein that the grounds urged in the writ petition are sought to be highlighted by the learned Senior Advocate, Shri M.V. Seshachala, appearing for the counsel for the petitioners.

3. The learned Additional Advocate General, Shri A.S.Ponnanna appearing for the State would contend that in the co-operative sector of the State, there are co-operative sugar

factories, co-operative spinning mills, co-operative industrial societies, etc., wherein costing work plays an important role and considering the syllabus, a Cost Accountant has to go through and it was found that even a Cost Accountant has adequate knowledge of Accounting principles and Accounting Systems and taking into account the serious shortage of professionals available for carrying out the audit work of co-operative societies, it was found to be a dire need to include Cost Accountants and Cost Accountant firms within the meaning of Auditor and Auditing firm in Section 63 of the KCS Act.

4. Shri Udaya Holla, Senior Advocate, appearing for the counsel for the impleading applicants, would contend that the petitioners have suppressed the fact that they had earlier filed a writ petition on identical grounds before the Dharwad Bench of this Court and the same having been dismissed, the petitioners are precluded from presenting the present petition.

On merits, it is pointed out that the petition is misconceived as the Curriculum of the Cost Accountants is similar to that of Chartered Accountants and the services rendered by both are almost similar and various Central and State enactments empower auditing being carried out by the Cost Accountants. A list of 46 such statutes are specified in the statement of objections. There is also a comparative table of the Curriculum, pedagogy and practical training of Cost Accountants and Chartered Accountants to demonstrate that the Cost Accountants are competent to carry out auditing work.

Reliance is also placed on the respective commentaries by the learned authors S.P. Iyengar and M. Hanif, to indicate the relationship between cost accounting and financial accounting. To assert that all Cost Accountants are competent to carry out auditing, which would encompass within itself both the costing aspect as well as the financial statements of an entity.

5. On a careful consideration of the rival contentions, it is not evident that by virtue of the impugned amendment, a Cost Accountant has been enabled to carry out functions which can only be performed by a Chartered Accountant. This is statutorily governed and there can be no entrenchment on such functions. It is not the case of the petitioners that auditing the accounts of a co-operative society is the exclusive domain of Chartered Accountants. If that be so, there is no ground for challenge made out.

The petitions are accordingly dismissed.

Sd/-
JUDGE

nv*

HIGH COURT OF KARNATAKA
BENGALURU

'TRUE COPY'
Section Officer
High Court of Karnataka
Bengaluru-560 001

"Registered" News Bulletin for India vide No.KA/BGGPO/2542/2015-17
RNI Regn. No. KARENG/2013/51293
Licensed to post without prepayment License No. WPP-309
Total No. of Pages Printed : 20
Date of Posting 15th of the month, Place of Posting at Bangalore PSO, Mysore Road, Bangalore 560026

# KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

## VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

## MISSION

- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.


**KSCAA NEWS BULLETIN** English Monthly Printed, Published & Edited by CA. Dileep Kumar T M, President on behalf of **Karnataka State Chartered Accountants Association,** # 7/8, 2nd Floor, Shoukath Building, S.J.P. Road, Bengaluru-560 002. **Ph : 2222 2155, Tel. Fax : 2227 4679, e-mail : kscaablr@gmail.com, Website : www.kscaa.com**
Printed at **Jwalamuki Mudranalaya Pvt. Ltd.,** 44/1, K.R.Road, Basavanagudi, Bengaluru- 560 004, Ph : 080-2660 1064, e-mail: jwalmuki@gmail.com.
Published at # 7/8, 2nd Floor, Shoukath Building, S.J.P.Road, Bengaluru-560 002. Editor : **CA. Dileep Kumar T M**