# KSCAA NEWS BULLETIN

English Monthly
for Private Circulation only

Vol. 3 • Issue 6 • ₹ 25/- • February 2016

ಮಹಾಶಿವರಾತ್ರಿಯ
ಶುಭಾಶಯಗಳು

## 28th KSCAA Annual Conference

on Saturday & Sunday
**5th & 6th March 2016**
**Jnana Jyothi Convention Centre**
Central College Campus, Bengaluru

# President's Communique

*Dear Professional Colleagues,*

Heartiest congratulations to CA. Devaraja Reddy on being elected as President and CA. Vikamsey Nilesh Shivji as Vice-President of the prestigious Institution, the Institute of Chartered Accountants of India. I wish them a successful tenure. Wishing them all the best for their noble future endeavors.

Association organized two mofussil programs during the months of January 2016 and February 2016. Association successfully conducted Chartered Accountancy Course awareness program for pre-university and degree students at Shri Basaveshwar Vidya Vardhak Sangha (BVV Sangha), Bagalkot jointly with the Bagalkot District Chartered Accountants Association, Bagalkot on 23rd January 2016. It was attended by more than 250 students comprising Commerce and non-commerce streams. I candidly thank the Management of BVV Sangha, the Office Bearers of the Bagalkot District Chartered Accountants Association, Bagalkot and CA. Kumar S. Jigajinni, Chairman, Mofussil Program Committee making this program memorable. Association successfully conducted Workshop on issues in Income Tax Assessments jointly with Tumkur District Chartered Accountants Association (TDCAA) at TDCAA premises, Tumakuru on 6th February 2016 and the program was well attended by Chartered Accountants and CA students. I sincerely thank CA. T.N. Raghavendra, Secretary, TDCAA and other Office Bearers of TDCAA for making this program successful.

Association is holding its 28th Annual Conference on 5th & 6th of March, 2016. It is a mega event for the Association, hence we request all the members to block their calendar and actively participate in this knowledge sharing and networking exercise. We earnestly request all Branches of ICAI and all District Associations of Karnataka State, not to hold any events on these dates and support this Annual Conference. The Conference details are published elsewhere in the News Bulletin. The Unique Selling Point (USP) of this Conference are (1) Open House – Question & Answer Session on Practical Issues in Income Tax where the elite panel of Income Tax Experts will address the members' queries at length (2) Tax Clinic exclusively for mofussil members – a one on one interactive session with elite panel of Income Tax Experts for query resolution. I earnestly request all the members to make use of this wonderful opportunity. You may write in your queries to samvit.kscaa@gmail.com or by post to Association and it should reach us by 25th February 2016. I sincerely request all the members to participate in this flagship conference in large numbers and make this event a grand success.

The Global Investors Meet **"Invest Karnataka 2016"** has brought in investment commitments of over Rs.3.07 lakh crore of which Rs.1.73 lakh crore has already been approved by the Karnataka Government. Agreements have been inked in various sectors including energy, aerospace, defense and the projects are located across the state including districts of Ballari, Dakshina Kannada, Mysuru, Tumakuru, Shivamogga, Bengaluru Rural and Kolar. This meet was attended by 5,000 participants including 1,000 from overseas. Cumulatively, these investment proposals are expected to generate a total employment of 6,70,931 across the state. Enthused by the encouraging response, the Industries Minister said the State Government has decided to appoint a special nodal officer to oversee the MoUs signed with investors and come out with a new entity to ensure ease of doing business. This is besides Rs.1.50 lakh crore investments announced by the Central Government for the development of roads, ports and other mega projects. There will be conducive environment for Chartered Accountants and tremendous opportunity creation in near future. As partners in nation building, I urge all the members to participate in Government initiatives and reap the benefits of growth.

The CBDT has issued guidelines for expeditious tax refund of up to Rs. 5,000 in cases where the department wants to adjust the refund with a pending demand, which has been contested by the assessee. The CBDT in its Office Memorandum said "Where the tax payer has contested the demand, Central Processing Centre (CPC) would issue a reminder to the Assessing Officers about the contention of the tax payer, asking them to either confirm or make appropriate changes, to the demand within 30 days." The CBDT further, said "where the tax demand has not been contested by the assessee, the CPC would issue a reminder to the taxpayer asking to either agree or disagree with the demand and submit response on the e-filing portal within 30 days." Therefore, where assessee had contested the tax demand, and there is no response from AO to the reminder sent by CPC, then the CPC would issue the refund without any adjustment. Now, the responsibility on non-adjustment of refund against outstanding arrears would lie with the AO. It is a move in the right direction and the guidelines would help further streamline the process of refunds. I would request all the members to create necessary awareness among the tax payers.

In the wake of recent reports of sharp spike in loan write-offs and non-performing assets and a steep fall in profits spooking the banking sector, Reserve Bank Governor at recently concluded CII Banking Conference made it clear that banks "may require deep surgery" to clean up their balance sheets and put stressed projects back on track. The classification of loans as non-performing assets (NPAs), is an anaesthetic that allows the bank to perform extensive necessary surgery to set the project back on its feet. While there are external factors which have affected asset quality, internal ones are also as important and "governance deficit" is a big issue.With the bank audits round the corner, a word of caution for all the members to exercise due care and diligence while performing audit of Public Sector, Private and Co-operative Banks.

Lance Naik Hanumanthappa Koppad, who was described as a miracle soldier after being dug out alive from snow and ice in which he was buried for six days in the inhospitable Siachen glacier, died on 11th February 2016. Association pays homage to all the brave hearts and proud sons who lost their lives in Siachen, serving the Nation.

May the glory of Shiva Shankar uplift your soul and banish all your troubles.
Happy Maha Shivratri.
In service of the Profession,

**CA. Dileep Kumar T M**
President

## Congratulations to Torch Bearers of ICAI 2016-17

**CA. M. Devaraja Reddy**
**President, ICAI**

**CA. Vikamsey Nilesh Shivji**
**Vice-President, ICAI**

# KSCAA

## News Bulletin

February 2016
Vol. 3 Issue 6
No. of Pages : 20


## CONTENTS


Is Service Tax Payable on Notice Period Recovery? 4
**CA Madhukar N Hiregange & CA Mahadev.R**

Drafting Guidelines against Notices and Orders under the Karnataka VAT Law 5
**CA G.B. Srikanth Acharaya & CA Annapurna Kabra**

Indirect Taxes Update – January 2016 8
**CA C.R. Raghavendra & CA J.S. Bhanu Murthy**

Sale Vis-À-Vis Works Contract – Distinction and Issues Involved Therein 10
**CA Kuber V. Hundekar**

Section 70 and the Denial of Input Tax Credit 14
**Vikram A. Huilgol**



**Disclaimer**

The Karnataka State Chartered Accountants Association does not accept any responsibility for the opinions, views, statements, results published in this News Bulletin. The opinions, views, statements, results are those of the authors/contributors and do not necessarily reflect the views of the Assocation.


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

**email: kscaablr@gmail.com**

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

# 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.

**MOTTO: KNOWLEDGE IS STRENGTH**

## Request for KSCAA Legal Fund

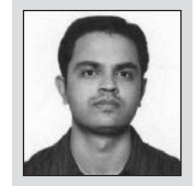
***KSCAA requests the members to generously contribute towards the legal fund and support in its constant endeavour to protect the interests of our profession.***

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


## ADVERTISEMENT TARIFF

| Colour full page | | Inside Black & White | |
|---|---|---|---|
| Outside back | ₹ 20,000/- | Full page | ₹ 12,000/- |
| Inside back | ₹ 16,000/- | Half page | ₹ 6,000/- |
| | | Quarter page | ₹ 4,000/- |

**Advt. material should reach us before 5th of the month, 15% rebate if booked for minimum of 3 issues.**



# Is Service Tax Payable on Notice Period Recovery?

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

In some of the organisations, the employees are legally bound to serve for specified period (varying from 1 to 3 months) once they wish to leave the organisation. In case of failure to serve the specified period, the security amount collected at the time of appointment or amount which could be part of salary would be withheld by the organisation as 'Notice period recovery'. There was no levy of service tax on such amounts till introduction of 'Declared service' concept. From July 2012, after introduction of declared service concept, there have been different views expressed with regard to service tax applicability. In this article, we have tried to analyse the service tax implication on notice period recovery its converse as well as possible solution.

Under the negative list regime, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act shall constitute a 'declared service' as per Section 66E (e) of Finance Act 1994. Accordingly, such service would be liable for service tax subject to provisions of place of provision of service. When the employee leaves the organisation without serving the stipulated notice period, then such activity of toleration of an act by the employer could be considered as 'declared service' liable for service tax.

One could argue that the services are in relation to employment and excluded from service definition. However, it is important to note that what is excluded from service definition is provision of service by an employee to employer and not otherwise. In case of 'notice period recovery', the tolerance of act is the service provided by employer to employee and therefore, the same may not be covered under the exclusion part.

***Recent clarification from department***

Recently, the Director General of Central Excise Intelligence (DGCEI) has held the following with regard to security amounts forfeited by a company for not serving notice period:

1. The activity of entering into an agreement by employer with employee to allow him to forfeit the security deposit or paying some charges/expenses/fee etc., in case of his leaving the employment without giving stipulated notice or completing the bond period, appears to be covered under the declared services of, *"agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"*.
2. These services are being provided by the employers to its employees and consideration in terms of forfeiture of security deposit or other payments is being received by the employers in lieu of these services. *Hence, Service Tax would be leviable on employers for providing these services.*

DGCEI has also communicated this to all Chief Commissioners for taking necessary action in similar cases in December 2015. Therefore, the employers collecting amounts as notice period recovery may be asked to discharge service tax.

***Point of taxation for the service***

The point of taxation (POT) for the services provided would be determined as per Rule 3 of POT Rules 2011 as below:

(a) Time when the invoice for the service provided or agreed to be provided is issued if invoice issued within 30 days. Otherwise, POT shall be date of such completion of provision of the service.

(b) If payment is received before the time specified in clause (a), the time, when he receives such payment would be the POT.

In case of 'notice period recovery', it would be difficult to imagine issuing of invoice for the service provided. In case any amounts are recovered at the time of appointment, then it could be held that the date of receipt of such amounts is the point of taxation as such amounts are received for the services (tolerating the act) agreed to be provided. In case, payments are not received the date of breach of contract could be considered as completion of provision of service and point of taxation.

***(Contd. on page 7)***

# Drafting Guidelines against Notices and Orders under the Karnataka VAT Law

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

Following are the different kinds of Notices under the KVAT law.

| Notices (Forms) | Particulars | Section/Rule Reference |
|---|---|---|
| Form VAT 9 | Notice of rejection of application for composition of tax | Rule 137(1) |
| Form VAT 11 | Notice of cancellation of registration | Rule 145 |
| Form VAT 150 | Notice of rejection of returns in Form VAT 100 | Rule 39(1) |
| Form VAT 180 | Notice of demand of tax assessed/reassessed/ Penalties levied and interest payable | Rule 180(1) |
| Form VAT 185 | Notice of excess payment | Rule 180(1-A) |
| Form VAT 210 | Notice of demand for payment of tax | See Rule 17, 40, 44(1)(b), 44(2)(a), 157(3)(b) |
| Form VAT 275 | Notices for production of books of accounts and other documents under section 52(1) | Rule 35 |
| Form VAT 340 | Notices of demand of tax assessed and penalty levied under section 54 | Rule 49(4) |
| Form VAT 350 | Notice by tax recovery officer | Rule 57 |
| Form VAT 385 | Notice of attachment of immovable property | Rule 100 |
| Form VAT 435 | Rectification of defects | Rule 149(3) |
| Form VAT 480 | Proposition Notice | Rule 154 |

**Replies to the Notice**

The reply should be drafted in following manner

1. It should be addressed to the concerned officer who has issued the notice
2. Reference of Notice number and date should be given
3. The reply should be drafted within the time limit specified in the notice
4. If required opportunity of being heard should be pleaded for personal hearing or for additional submissions against the notice
5. The issues raised by the department should be drafted chronologically
6. The reply to the above issues should be drafted issue wise
7. While drafting the reply issue wise, the reference of sections, Rules, Provisions, Notifications, Circulars, Case laws should be given along with the content of relevant reference.
8. The pleadings should be made to drop the proceedings and to consider the submissions as made in the reply letter
9. The language used should be more specific and unambiguous for the issues raised
10. The computations as made by the department in the notice should be checked and recomputed as per books of accounts
11. If the similar issue is raised by the different jurisdiction or the similar issue is raised for different year then in such instance the reference should be added in the reply letter for the information of the department and can plead to drop the proceedings.
12. If required for some of the issues the reference of other laws may be added like transfer of property Act, Finance Act, Income Tax Act, Service tax law, etc
13. Supporting documents/Annexure reference should be given in the reply letter and should be enclosed along with the reply letter. Even the notice received from the department should be enclosed. If the documents are abundant, the index showing list of documents with the page numbers should be made so that it can be easily traced by the department officials.
14. The relevant paras should be highlighted in bold or capital letters if required.

15. The reply or contentions should be detailed drafted so that it can even substantiate during the appeal proceedings

In case the order of the Assessing Authority suffers from any infirmities such as disallowance of credits, disallowing the turnover as per records, non consideration of payments, etc then in such instances the dealer can apply for the appeal to the Higher Authorities.

Differences between filing appeals before JCCT (Appeals) and The Appellate Tribunal

| Sl No. | JCCT (Appeals) (section 62) | Appellate Tribunal(Section 63) |
|---|---|---|
| 1. | The Appeal has to be made in Form VAT 430. | The Appeal has to be made in Form VAT 440. |
| 2. | The time limit for making the appeal is 30 days from the date of receipt of the order. | The time limit to file an appeal is 60 days from the date of receipt of order. |
| 3. | The appeal will be made against an order made by the Assessing authority, the one who is lower than the rank of Joint Commissioner. | The appeal will be made against an order made by JCCT (Appeals). |
| 4. | The appeal may be preferred by the dealer or the commissioner. | The appeal can be made by the dealer or commissioner or an officer appointed by state Govt. |
| 5. | There are no fees to be paid along with the appeal. | The fees will be 2% of amount disputed subject to minimum of Rs. 200/- or maximum of Rs. 1000/-. |
| 6. | There is no court procedures prescribed for the proceedings of JCCT appeals. | The court procedures as prescribed in Karnataka appellate Tribunal Regulations are to be followed. |
| 7. | The stay order passed by JCCT (Appeals) will be valid forever. This provision is applicable after 01.04.2012 | The stay order passed by Tribunal is valid for 365 days. After which the recovery can be made. And also no further stay can be granted. |
| 8. | No time limit is specified within which the proceeding has to be completed. | No time limit is specified in the act; however court procedures will be followed. |
| 9. | It has the authority to reduce or enhance the liability but cannot send back to lower authority to make fresh assessment. | It shall direct the lower authority to change the order. |
| 10. | If one is not satisfied with the order issued by JCCT (Appeals), they shall prefer an appeal to Appellate tribunal. | If one is not satisfied with the order issued by the Appellate authority, they shall prefer an appeal to the High Court. |
| 11. | The order will be passed by JCCT (Appeals) within 90 days after the hearing and proceedings of the case is completed. | Nothing specified in the KVAT Act. Court procedure will be followed. |

**General Guidelines while drafting the Appeal under the KVAT law**

- Discussion with the dealer on the nature of business, Collection of documents like returns, supporting documents like invoices, Challans, on which reliance is placed.
- Discussion with dealer on strong and weak areas in the order and intimating the dealer the chances of success in each of these areas.
- Comparison of tax demanded, tax as per returns, tax as per books.
- Remittance of 30% of the disputed tax.
- Drafting should be in the chronological order mentioned below
- Preparation of Form 430/Form 440 (VAT) with disputed amounts with break-up of individual issues
- **Facts of the case** should contain brief details of

a. Dealer

b. Dealer's nature of business.

c. Details of inspection, statements given, notice served, reply to notice, points dropped by authority after considering the reply, taxes paid at the stage of reply to notice and finally the points raised in the order.

d. The detailed Facts of the case including the facts not brought out at the stage of replying to the notice.

e. The facts should not contain an argument, evidence supporting the facts. The facts should only narrate of the true picture of the case. The documents annexed to

the appeal should support the facts narrated under this Section

f. The Issues raised should be in accordance to the break-up of disputed amount in the Form to Appeal.

- **The grounds to appeal** should bring out the following

a. Capitalize errors contained in the order like failure of Assessing authority to enter the finding on which tax has been demanded.

b. The Grounds should support the facts narrated. There should be simplicity of Language, clarity of expression, short sentences, brevity and concise

c. Case Law should be provided wherever required. Only relevant case laws should be given along with gist of the relevant paragraphs in the case law. Thorough research should be made to find the relevance to the current case. In case there are many supporting case law, the same can be listed under a separate annexure.

d. The prayer should be exhaustive, clear and should match the disputed amount break up in the Form to appeal as well as the Issued raised in the appeal.

e. The appeal should be filed within 30 days/60 days from the date of receipt of order and in case there is a delay, an application for Condonation of delay should be submitted stating the reason for delay. It is the discretionary power of the FAA to admit the appeal or not.

f. In case of KVAT, it is mandatory that 30% of the disputed amount should be remitted to the assessing authority. For the balance 70%, a stay application should be submitted

g. The Appeal may be drafted with double line spacing. Rule 2 of Order 41 specify that the memorandum shall set forth the grounds in concisely, under distinct heads, consecutively numbered, Grounds of objection without an argument or narrative.

h. The paper book should contain an index. All the pages in the Appeal Paper book should be consecutively numbered. The index should correlate to the number on the pages. Three sets of the paper book should be prepared. The numbers on all the 3 sets should be uniform.

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

---

## Is Service Tax Payable on Notice Period Recovery?

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

***Value of service and determining the tax***

It may be impracticable to issue invoice and collect service tax by the employer from employees breaching the contract terms. Therefore, the best approach could be to have a clause in the employment agreement about the service tax applicability on the forfeiture amount. This could inclusive in which case the tax would be out of pocket for the company. It could also be exclusive in which case tax would be out of pocket for the outgoing employee.

***Cenvat credit utilisation for payment of tax***

For the purpose of payment of service tax on notice period recovery, the assessee would be eligible to utilise the Cenvat credit available if any as such recovery could be treated as output service.

**Converse Situation**

In few companies, in the event of firing an employee, the companies may opt to pay additional notice period salary and ask employee to leave immediately. Such additional amount paid would be "part of salary" and paid as salary. In such cases, there may not be disputes with regard to service tax applicability.

***Registration amendment and disclosure in return***

As there is no specific category for the service discussed, the assessee would be required to get registration (amendment if already registered) under the head *'Other taxable services [ services other than the 119 listed services]'* for payment of service tax. The tax payments need to be appropriately disclosed in the periodical return to be filed in form ST-3 which would be helpful in claiming refunds when paid under protest.

**Conclusion:** The key terms in declared services such as 'refrain', 'tolerate' etc., needs clarity as these words leading to lot of interpretations and disputes. Employers who collect various amounts from employees such as Notice pay, canteen expenses, travelling expenses, etc, are not clear about the service tax implication. Therefore, a detailed clarification on these kinds of transactions from CBEC is need of the hour. Looking at GST, which may be ushered in April 2017, such exclusions / exemptions may not exists. However, for the time being it would be ideal for the assesses to pay service tax under protest on notice period recovery with intimation to department. If in future it is held that the service tax is not payable, the refund of such tax paid under protest can be claimed.

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

# Indirect Taxes Update – January 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

i) Proviso to Rule 3(1)(vii) provided for restriction on availment of credit of CVD paid on floating structure imported for breaking up purposes. The said restriction has been removed

[Source: Notification No. 01/2016- CX (N.T), Dated 01.2.2016]

ii) Rule 2(l) which defines input services has been amended to clarify that sales promotion includes services by way of sale of dutiable goods on commission basis

iii) Rule 3(4) which deals with utilization of cenvat credit has been amended to specify that the Cenvat credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Swachh Bharat Cess.

[Source: Notification No. 02/2016- CX (N.T), Dated 02.2.2016]

### II. Service Tax

iv) **Rebate of service tax on export of goods:** Notification No. 41/2012-ST dt. 20.06.2012 which provides for rebate of service tax on export of goods has been amended to provide rebate on taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export. Further, with increase in rate of service tax, the rate of rebate has been increased.

[Source: Notification No. 01/2016- S.T, Dated 02.2.2016]

v) Notification No. 12/2013- ST, dated the 1.7.2013 has been amended to allow refund of Swachh Bharat Cess paid on specified services used in an SEZ

[Source: Notification No. 02/2016- S.T, Dated 02.2.2016]

vi) Notification No. 39/2012- ST, dated the 20.6.2012 has been amended to allow rebate of Swachh Bharat Cess paid on all services used for export of services.

[Source: Notification No. 03/2016- S.T, Dated 02.2.2016]

## B. Important Decisions

### 1. Sodexo SVC India Pvt. Ltd. Vs State of Maharastra 2016(331) ELT 23(S.C.)

**Facts:** On the basis of request from customer Sodexo supplies are paid vouchers, which are used by the employees of customer to purchase goods with affiliates of Sodexo.

**Issue:** Issue before the Hon'ble Supreme Court was whether issue of Sodexo to its customers could be termed as goods to attract octroi or local taxes?

**Held**: Supreme Court held that as vouchers were neither 'sold' by assessee to its customers nor they could be traded/sold separately, they were not 'goods'. Hence no Octroi/Local body tax could be levied under Maharashtra Municipal Corporation Act, 1949. Sodexo was only facilitator and medium between affiliates and customers and essential character of entire transaction was to provide services by sodexo and this was achieved through vouchers. It was observed that in view of Policy Guidelines issued by RBI under Payment and Settlement Systems Act, 2007 to regulate under such transactions, the essential character is that of service and not supply of goods.

### 2. Commissioner Of Central Excise, Delhi-III Vs M/s Hero Honda Motors Ltd 2016-TIOL-01-SC-CX

**Facts**: Assessee is in business of manufacturing motorcycles since 1985 and was taking a deposit of Rs. 500 per motorcycle at time of booking of motorcycle - It is alleged that said deposit was an additional consideration - Tribunal after re-examining entire material that was produced before it by assessee, observed that overall effect of deposit on financial position of company or its profitability had no direct relevance to dispute:

**Held**: Hon'ble Supreme Court agreed with the findings of the Tribunal which had held that price of the motorcycle manufactured by it was market driven and it did not follow a cost of production plus reasonable profit pricing policy and hence it was held that the deposits received by the assessee company did not affect the value of goods.

3. **Devang Paper Mills Pvt Ltd Vs UoI 2016-TIOL-37-HC-AHM-CX**

   **Facts**: While remitting duty of excise for the month of July 2014, the assessee paid under wrong excise registration. Assessee immediately communicated the said mistake to the department, for which the department advised the assessee to claim refund of the said duty and also to make fresh payment for the said month. Meanwhile, the department issued notice proposing recovery of duty with interest and penalty under Rule 8(3A) of the Central Excise Rules, 2002.

   **Held**: On challenge of said demand, the Hon'ble High Court held that it is an undisputed fact that the assessee did pay the duty and merely because of mentioning of wrong assessee code, he should not be penalized similar to non-payment. Based on the above, the Court directed the department to give credit of the payment made by the assess (under the wrong code) by making necessary accounting entries on the basis that the same was paid at the relevant time.

4. **CCE Vs. Karan Agencies 2016 (41) S.T.R. 161 (Bom.)**

   **Issue**: Assessee had entered into an contract with M/s. Kolhapur Sugar Mills Ltd. ('KSM') for manufacturing and sale of liquor in the name of M/s. KSM. The plant and machinery is owned by M/s. KSM, who allowed to use the entire infrastructure by the respondent for a consideration of Rs. 30 lacs per annum. The respondent conducted entire business of manufacture of liquor, its sale and even effected the recovery of the sale proceeds in the name of M/s. KSM. The books of account were maintained in the name of M/s. KSM and sale proceeds were also credited to the account of M/s. KSM. At the end of each financial year, after settlement of accounts, the balance in Profit and Loss Account was paid by M/s. KSM to the respondent after retaining an amount of Rs. 30 lacs being the consideration agreed against use of infrastructure.

   Based on the above facts, the service tax department demanded service tax under the heading Business support services from respondents on the amounts received from M/s KSM. Tribunal set aside the demand on the ground that no support service was provided by assessee to KSM.

   **Held**: High Court concurred with the view of the Tribunal, which held that as per the agreement, the respondent had undertaken the activity of manufacture and sale of products of the distillery unit itself and profit and loss also is on account of the respondents. Further, it was held that the respondent has not given any support service to M/s. KSM

5. **Shukra Beedies (P) Ltd Vs CCE 2016-TIOL-318-CESTAT-MAD:**

   **Facts:** Assessee availed input services for the purpose of manufacture and head office of the appellant incurred these expenses also paid service tax. The CENVAT credit of such service tax was claimed by the appellant their factory and the same was denied by the department on the ground that the Head office was not registered as input service distributor.

   **Held**: The Tribunal allowing the credit, it was held that the registration is a regulatory measure to bring the assessee to the fold of the law. Even if unregistered, the liability under law remains unchanged. Therefore, denial of the distribution of CENVAT credit during unregistered period shall be anomaly to law when tax liability incurred is ordered to be paid. Therefore, the appellant is entitled to the CENVAT credit.

6. **CCe Vs. Taneja Aerospace and Aviation Ltd. 2016-TIOL-281-CESTAT-MAD**

   **Facts**: Assessee supplied Radar and its parts for the Indian Navy Helicopters on payment of duty. Subsequently on communication from Indian Navy, that the goods so supplied are exempt from duty in terms of sl. No. 3 of Notification No. 64/95-CE, they preferred refund of the duty paid. The refund was rejected by original authority and the Commissioner (appeals), on appeal allowed the refund. Against which the department preferred an appeal before Tribunal.

   **Held**: Tribunal relying upon the decision of the Supreme Court in the case of CE, Surat, Vs.Essar Steel India Limited - 2014-TIOL-61-SC-CX, held that the certificate issued by the Indian Navy would clearly show that the goods are eligible for exemption and hence refund cannot be denied.

7. **M/s Tata Technologies Ltd. Vs. CCE, 2016-TIOL-272-CESTAT-MUM**

   **Facts**: Assessee provides taxable as well as exempted services and avail input service credit under Rule 3 of the Cenvat Credit Rules on common input services used in providing output services. for the period from April

***(Contd. on page 13)***

# Sale Vis-À-Vis Works Contract – Distinction and Issues Involved Therein

CA Kuber V. Hundekar

The subject of works contract, is one of the most litigated and confusing one. The Constitution (Forty Sixth Amendment) Act, 1982 granted powers to State Legislatures to enact laws for providing the levy of tax on the transfer of property involved in the execution of works contracts. The distinction between the contract of sale and works contract is relevant since the State Legislatures are empowered to impose tax only on the value of goods involved in the works contract and not on the value of services.In this article an attempt is made to explain the concept of works contract and distinguish a works contract with contract for sale.

1. **Meaning of works contract:**

   A works contract is a composite contract involving supply of materials and provision of service. In simple terms, an agreement enforceable under law is a contract and such contract is works contract if it involves execution of works. In terms of the judgment of Honourable Supreme Court in the case of State of Orissa vs Titaghar Paper Mills Co. Ltd., a works contract is a compendious term to describe conveniently a contract for the performance of work or services in which the supply of materials or some other goods is incidental.

   The provisions relating to works contract under the Karnataka VAT Act, 2003 are governed by section 2(29)(b) of the said Act. In terms of the said Section every transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract would constitute a "sale".

   Section 2(37) of Karnataka VAT Act, 2003 defines the word works-contract as to include any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

2. **History:**

   Prior to 46th Constitution amendment, the States were not empowered to levy tax on the transfer of property involved in the execution of works contract in terms of the judgment of the Larger Bench of Honourable Supreme Court in the case of The State of Madras vs Gannon Dunkerley & Co., (9 STC 353).

   In view of the above observation, the Article 366 of the Constitution was suitably amended to include transfer of property in goods involved in the execution of works contract by way of insertion of new clause 29A. The Constitutional validity of such amendment was upheld by the Constitutional Bench of the Honourable Supreme Court in the case of Builders Association of India and Others vs Union of India and Others (73 STC 370) and held that after the amendment the States are empowered to divide composite contract and impose tax on value of material used in such composite contract.

   The transfer of property involved in the course of execution of works contract is liable to tax under State Vat laws and value of service portion in the works contract is liable to service tax. Consequent to Constitutional amendment, the States are empowered to levy tax only on value of goods involved in the works contract and not on the value of services. Thus, in the terms of clause 29A to Article 366, tax under sales tax law can be imposed only on value of goods involved in the execution of works contract and not works contract by itself. As such, it is important to understand whether a contract is for works or for sale.

3. **Distinction between contract for sale and works:**

   The question whether a particular contract is a contract for sale or for work and labour is always a difficult question. The difficulty lies not in the formulation of the test for determining when a contract can said to be a contract for sale or a contract for work and labour, but in the applications of tests to the facts of a particular case in hand. The distinctions and tests enunciated by courts in various cases are not exhaustive and do not lay down any rigid or inflexible rule applicable alike to all transactions. They merely focus on one or the other aspect of the transaction and afford some guidance in deciding the question.There is no standard formula by which sale

contract and works contract may be distinguished from one another. The Honourable Supreme Court in the case of Hindustan Shipyard Ltd., vs State of Andhra Pradesh (119 STC 533) has observed that the distinction between a contract of sale and a works contract is not free from difficulty and has been the subject-matter of several judicial decisions. There is no straitjacket formula that can be applied and no quick-witted tests that can be devised as would be infallible, for it is all a question of determining the intention of the parties by culling out the same on an overall reading of the several terms and conditions of a contract.

The Honourable Supreme Court in a number of decisions has pointed out distinction and has also devised certain tests. It is relevant to note that these tests are not exhaustive and do not lay down any rigid or inflexible rule applicable alike to all transactions. The same are discussed in the following paragraphs:

a. **Main object should not be transfer of chattel as chattel:** The contract for sale is the one whose main object is to transfer the property in chattel as a chattel to the buyer. Accordingly, the contract / agreement can be termed as works contract if it does not involve transfer of chattel as chattel and such contract / agreement involves use of material for execution. In other words, if the contract is primarily for supply of materials at agreed prices, it will be a contract of sale and where contract is primarily a contract of work involving labour and materials in the course of execution, such contract is works contract.

   In an issue relating to classification of a contract as works or sale, Honourable Supreme Court in the case of Vanguard Rolling Shutters vs CST (39 STC 372) has held that steel shutters manufactured by assessee as per the specifications given by parties and fixed at the premises of the customers is not a pure and simple sale of goods or materials as chattels but was a works contract.

   In Hindustan Aeronautics Limited vs State of Orissa (55 STC 327), the assessee imported materials and components on behalf of the Government of India and manufactured aircrafts. The goods belonged to the Government of India but were entrusted to assessee for manufacture of aircraft to be delivered to Air Force. The Honourable Supreme Court analysing the facts, observed that, in a contract for sale, the main object of the parties is to transfer property in and delivery of possession of a chattel as a chattel to the buyer.Accordingly, it was held that, contract executed by assessee was works contract and was not a contract for sale.

   The Constitution Bench in the case of State of Punjab vs M/s Associated Hotels of India Ltd., (29 STC 474) held that distinction between works contract and contract for sale rests on a clear principle. A contract of sale is one whose main object is transfer of property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where the principal object of work undertaken by the payee of the price is not transfer of a chattel qua chattel, the contract is one of work and labour.

   In terms of the judicial precedents referred above, the contract can be termed as works contract if it involves transfer of property in such materials in the course of execution of contract.

b. **Dominant intention is not relevant:** In Rainbow Colour Lab vs State of Madhya Pradesh (118 STC 9), Honourable Supreme Court observed that, after the 46$^{th}$ amendment, if the dominant intention of the contract is to transfer property in goods, the States are empowered to divide such contract into two separate contracts by legal fiction. In other words, where the transfer of property in materials is incidental to contract of service, States are not empowered to divide the contract into transfer of material and provision of service. Accordingly, it was held in Rainbow Colour Labs that the job done by the photographer is in the nature of service contract not involving any sale of goods. However, Larger Bench of Honourable Supreme Court in the case of Larsen & Toubro Ltd., and Another vs State of Karnataka and Another (65 VST 1), observed that the dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are composite in nature.It was further observed that,even if the dominant intention of the contract is not to transfer the property in goods and rather it is rendering of service or the ultimate transaction is transfer of immovable property, tax may be levied on the materials used in such contract if such contract otherwise has elements of works contract. The dominant nature test is also held to be not a good law by Honourable Supreme Court in the case of State of Karnataka vs Pro Lab and Others (78 VST 451) wherein the judgment is pronounced contrary to the judgment in the case of Rainbow Colour Labs and is held that processing and supplying of photographs, photo prints and photo negatives are works contract and goods component therein is exigible to sales tax.

Accordingly, the contract which requires use of material incidentally may also qualify as works contract and States are empowered to levy tax on the value of material used therein after the 46[th]amendment. As such, it is inferred that, the theory of dominant intention is no more a valid test for distinguishing works contract and contract for sale of goods.

c. **Object of the contract:** In the State of Andhra Pradesh vs Kone Elevators (India) Limited 140 STC 22, the Constitutional Bench held that, in a contract of sale, the main object is the transfer of property and delivery of possession of the property, whereas the main object in a contract for work is not the transfer of property but it is one for work and labour. It is the essence of the contract or the reality of the transaction as a whole has to be taken into consideration for ascertaining whether a particular contract is for works or sale. The predominant object of the contract, the circumstances of the case and the custom of the trade provides a guide in deciding whether transaction is a sale or a works contract. Essentially, the question is of interpretation of terms agreed by the parties for a contract. Accordingly, the intention of the parties and object of the contract between the parties is relevant to distinguish contract for sale and works.

d. **Time when the property in goods is transferred to customer:**The time when the property in goods is transferred and the mode of transfer can also be referred to decide whether a contract is for execution of works contract. It is relevant to note the judgment in the case of State of Andhra Pradesh vs Kone Elevators (India) Limited 140 STC 22wherein the Honourable Supreme Court has laid down another test for distinguishing the contract for sale with works. It was observed that, if the property in goods is transferred as chattel at the time of delivery of goods, such a transaction is sale. In the event, if the property in goods is transferred as accession during the course of execution of a contract, such a transaction qualifies as works contract.

e. **Property in goods as a whole:** In the case of CST vs Purushottam Premji (26 STC 38), Honourable Supreme Court observed that, in the case of works contract, the person providing service does not have property in the thing produced as a whole, even if part or whole material used by him may be his property. However, in the case of a contract for sale, the thing produced as a whole has individual existence as the sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to the other party for price.

   Goods must exist at the time of transfer of property in goods from the contractor to the contractee. Mere execution of a works contract does not by itself attract liability for tax unless it is accompanied by transfer of property in goods, involved in the execution of the contract. The emphasis is on the transfer of property in goods. Whether consumption of goodsin the process of executing a contract will be termed as works contract is a debatable issue. However, with reference to the law laid down in the various judgment in recent past, States are empowered to divide the contract value and can impose tax on the value of consumables used in the process of execution of the contract.

f. **Terms of the contract are important:** It is important to analyse terms of the contract agreed between the parties to understand whether the contract is one for works. It is relevant to note here that, reference to mode of payment and details / description as indicated in the invoice would be incorrect for the purpose of classification. In this regard, it is also relevant to note the judgment of Honourable Supreme Court in the case of Hindustan Aeronautics Limited (55 STC 327) wherein it was held that the answer to question whether it is a works contract or it is a contract of sale depends upon the construction of the terms of the contract and in the light of the surrounding circumstances. Accordingly, the essence of the contract or the reality of transaction as a whole has to be taken into consideration, in judging whether the contract is for a sale or for work and labour.

g. **Commercial value or marketability:**In certain case, the test of marketability is adopted to decide whether a particular contract is works contract. However, the test of marketability is not a decisive test for classification. In the case of State of Tamil Nadu vs Anandam Viswanatham (73 STC 1), Honourable Supreme Court in an issue ascertaining whether the printing work is a contract of sale observed that where the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is works contract only.

h. **Separate contract for supply and installation:**The issue whether separate contract for supply and installation qualifies as works contract or sale was before the Larger Bench of Honourable Supreme Court in the case of M/s Kone Elevator India Private Limited vs State of Tamil

Nadu and Others(71 VST 1). The Honourable Supreme Court analysing nature of contract held that, a contract for supply of goods will qualify as contract for sale and the contract for installation would be a contract for providing services. Accordingly, in case of separate contracts between the parties for supply and installation, such contracts will not qualify as works contract in terms of the law laid down by the Honourable Supreme Court.

4. **Conclusion:**

It can be seen that the Honourable Supreme Court has given its observations on almost every factor which can be considered for distinguishing the works contract from the contract of sale. It can also be seen that such factors seems to be a case specific and which could not be relied and applied in general for the purpose of distinction. In the absence of exhaustive tests and rigid rule applicable to determine whether a contract is for works, each of the above discussed factors may be considered. However, in my view, it cannot be said with certainty that such classification may not face judicial rumble.

*Author can be reached on kuber@sduca.com*

## Indirect Taxes Update – January 2016

***(Contd. from page 9)***

to September 2008, assessee opted to follow reversal of credit proportion to exempt services in terms of Rule 6(3A) and also filed declaration in may 2009. The proportionate credit was reversed along with interest in the month of May 2009. However, department issued show cause notice demanding 8% of value of exempt services on the ground that assessee has not filed declaration before opting for proportionate credit.

**Held**: Tribunal held that the condition of filing the declaration is only directory and not mandatory. Since the appellant has already reversed proportionate credit within the period as prescribed under rule 6(3A) the demands for 8% of value of exempted services, does not sustain. The Tribunal further observed that Rule 6 cannot be used as tool of oppression to extract the amount which is much beyond the remedial measure and what cannot be collected directly, cannot be collected indirectly, as well.

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

FULLY FURNISHED WITH A.C
712 SQ.FT. CARPET AREA
OFFICE SPACE AVAILABLE

SUITABLE FOR C.A. / ADVOCATE
AT
423-424, ALANKAR PEARL PLAZA,
K.G. ROAD, BENGALURU – 560 009

CONTACT:
R.K. GANERIWALA
98440 22468; 2225 1743; 2228 3459

Advt.

INCOME TAX SAVINGS SCHEMES

54EC

Capital Gains Bonds
AAA rated / 3 years lock-in
6% annual interest

80C
Equity Linked Savings Schemes (ELSS)
AXIS 30.29%
FRANKLIN TEMPLETON INVESTMENTS 23.40%
RELIANCE 24.72%
[ Holding period 3 years / Annualised Returns ]

80D
Health is Wealth
Do you have sufficient health cover?

For additional information / clarification, please feel free to contact
CA Kiran Boal 98803 93743 FChFP Karan Boal 99801 88850
wecare@boalfinancials.com
Achieve your Financial Goals with proper Financial Planning
Tax Savings · Children's Education · Home Plan
Life / Health Insurance · Marriage Plan · Wealth Creation
Wealth Protection · Retirement Planning

Advt.

# Section 70 and the Denial of Input Tax Credit

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

Introduction.

Since the inception of the VAT regime, a number of assessees across the country have been denied the benefit of availing input tax credit under the provisions of the respective State value added tax enactments, on the ground that selling dealers/vendors have not paid the tax collected by them to the State.In Karnataka, assessing authorities have consistently been relying on Section 70 of the Karnataka Value Added Tax Act, 2003 ("KVAT Act"), and reversing input tax credit availed by purchasing dealerson the ground that they have not discharged the burden cast upon them by Section 70 to prove that the correctness of their claim of input tax credit. This article analyzes the relevant provisions of the KVAT Act as well as case law on the issue, and discusses whether the Department's stand in this regard is legally sustainable.

Relevant Provisions of the KVAT Act.

Section 9 of the KVAT Act mandatorily requires every registered dealer liable to pay tax under the Act to collect such tax at the appropriate rates, and the tax collected by the dealer is required to be accounted for in accordance with the provisions of the Act. Section 10(2) of the Act defines "input tax" to mean the tax collected from a registered dealer on the sale to him of any goods for use in the course of his business, and Section 10(3) permits the purchasing dealer to deduct the input tax collected from him from the output tax payable by him for the purpose of calculating his net tax liability.

Pertinently, Section 10(4) states that, for the purpose of calculating the amount of net tax to be paid or refunded, no deduction for input tax shall be made unless a tax invoice, in relation to a sale, has been issued in accordance with Section 29, and the said invoice is with the registered dealer taking the deduction at the time any return in respect of the sale is furnished.

Section 29 of the KVAT Act requires every registered dealer effecting a sale of taxable goods to issue, at the time of sale, a tax invoice containing the particulars prescribed under Rule 29 of the Karnataka Value Added Tax Rule, 2005 ("KVAT Rules"). As per the said provision, the original of the invoice is required to be handed over to the purchasing dealer and the selling dealer is required to retain the duplicate.

Therefore, the scheme of the Act is that adealer selling goods is compulsorily required to collect tax on the sales effected by him, and the purchasing dealer can avail credit of such tax collected from him, subject to the restrictions enumerated in Section 11, provided he is possession of a tax invoice that has been raised by the selling dealer in accordance with the provisions of Section 29 of the KVAT Act.

Pertinently, the above mentioned provisions are the only ones in the KVAT Act that provide for the manner of availing input tax credit, and there is no provision in the Act which states that the purchasing dealer is required to reverse the input tax deducted by him if the selling dealer does not discharge his tax liability. Consequently, in cases where the selling dealers have not filed their returns and paid tax under the provisions of the KVAT Act, the Department officials have had no option but to rely on Section 70 of the Act in order to disallow the input tax credit availed by the purchasing dealer.

Section 70 of the Act reads as follows:

> *"For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer."*

Therefore, Section 70 merely casts the burden of proving the correctness of a claim of input tax credit on the dealer claiming such credit. The Section does not specify the manner in which the burden is required to be discharged. In other words, the provision does not stipulate the documents or evidence a dealer is required to produce in order to support his claim of input tax credit. It would, therefore, be pertinent to analyze how the Courts have examined the question as to what a dealer is required to do in order to discharge the burden cast on him under Section 70 and prove the correctness of his claim of input tax credit.

Relevant Judgments.

The Karnataka Appellate Tribunal ("KAT"), in M.K. Agro Tech Pvt. Ltd. v. State of Karnataka, 2013 (76) KLJ 326, held that the burden cast by Section 70 cannot be said to be discharged unless the purchasing dealer proves that the tax collected on the face of the invoice has been paid to the Department by the selling dealer. The relevant observations of the KAT are as follows:

*"Section 70(1) imposes a burden on a dealer to prove that claim to input tax is correct and then only, rebate of input tax is admissible. The word 'correct' does not simply mean that the figures furnished in the return and recorded in the books of accounts must tally with the tax invoices. Not only this condition should be fulfilled, the input tax credit available in the tax invoices should have been discharged by the supplier of the appellant to the AA, in addition, declaration in the returns filed to him and the State Exchequer has realized this Revenue from the supplier for return by way of refund or adjustment to the appellant. It is based on the settled principle of law that there must be fund (input tax in this case) for refund (again input tax for set off from output tax payable by the appellant). In this case fund meaning input tax paid by the supplier which is net tax for the supplier is not at all discharged by the supplier to his AA. When such net tax is not paid to the AA of the supplier, question of refund in the form of adjustment or set off from the output tax payable by the appellant does not arise."*

Similarly, in Nisha B. Patel v. State of Karnataka, 2013 (75) KLJ 465, the supplying dealers had raised valid tax invoices on the purchaser, but had had not declared the sales in their returns. In such circumstances, the KAT held that the purchasing dealer is not entitled to claim credit of the input tax paid by them to the selling dealers. The relevant observations of the KAT in this regard are as follows:

*"When input tax being the output tax or net tax for the supplying dealers cannot be recovered at all by the departmental officers, input tax credit on such tax invoices cannot be allowed. The tax invoices issued by the supplying dealers may look to be genuine and it can also be contended that input tax credit should be allowed on the basis of the above tax invoices but they cannot be considered as genuine tax invoices for the reason that the supplying dealers have not declared the turnovers covered by such tax invoices and tax liability thereon. […] This fact further establishes that the supplying dealers had fraudulent intention to defraud Revenue by not declaring turnovers liable to tax with payment of tax. In the result, the appellant is not entitled to obtain input tax credit out of fraudulent transactions."*

In Lakshmi Cashew Industries v. State of Karnataka, 2012 (72) KLJ 22, the KAT took a contrary view and held that "the legitimate tax to be discharged bythe selling dealer cannot be foisted against the buying dealer for no fault of the buying dealer." The KAT further observed that the concerned authority of the selling dealer "should have taken necessary steps to verify the erring dealer if the legitimate tax is not discharged by the said erring dealer." Accordingly, the KAT held that, since the purchasing dealer has submitted valid purchase invoices, it has succeeded in establishing the genuineness of the transactions and that, therefore, it was not proper to deny the purchasing dealer the benefit of availing credit of input tax paid by it. The judgment of the KAT in Laksmi Cashew appears be in consonance with the law laid down by various High Courts across the country on the issue of whether input tax credit can be denied to a purchasing dealer on the ground that the selling dealer has failed to discharge his tax liability.

In Gheru Lal Bal Chand v. State of Haryana,[1] the High Court of Punjab & Haryana held that, once the purchasing dealer produce a purchase bill issued by a registered dealer, it shall be presumed that the goods have suffered the incidence of tax, and the purchasing dealer cannot be held responsible and be made to run from pillar to post to verify that the selling dealer has discharged his tax liability. In conclusion, the Court held that, "no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or in collusion or connivance with the selling dealers."

Similarly, the Madras High Court, in Infiniti Wholesale Ltd. v. ACCT,[2] held that input tax credit availed by the purchasing dealer cannot be reversed on the ground that the selling dealer has not filed returns or paid tax. In arriving at its decision, the Court relied on two of its earlier judgments in Althaf Shoes P. Ltd. v. ACCT, (2012) 50 VST 179, and Sri Vinayaga Agencies v. ACCT, (2013) 60 VST 283, wherein the Madras High Court had quashed orders denying input tax credit to purchasing dealers because the selling dealers had not paid tax. The Andhra Pradesh High Court, too, in Harsh Jewelers v. Commercial Tax Officer, (2013) 57 VST 538, has taken a similar view and held that input tax credit availed by the purchasing dealer cannot be reversed on account of the failure of the selling dealer to file his returns and pay tax.

More recently, a Division Bench of the Karnataka High Court, in Milan Plywood v. State of Karnataka, (2015) 86 VST 117, affirmed the order of the Tribunal impugned therein insofar as it remanded the matter to the assessing authority in order to verify: (a) the genuineness of the transactions in question; (b) whether the purchasing dealer has paid the input tax to the selling dealer; and (c) whether the purchasing dealer has received the goods and has made necessary entries of the purchases in its books of accounts. The Court observed that, if it is found upon enquiry that the transactions are genuine,

[1] http://indiankanoon.org/doc/168626440/

[2] http://indiankanoon.org/doc/65612935/

then the assessing authority would not be justified in denying the benefit of input tax credit to the purchasing dealer merely because the selling dealer did not discharge his tax liability.

Discussion.

Since Section 70 of the KVAT Act does not specify how a dealer is required to support his claim of input tax credit, it would, in my opinion, be reasonable to assume that, in order to discharge his burden under Section 70, a dealer claiming credit must ensure that he has complied with all the provisions of the KVAT Act that relate to the availment of input tax credit. Therefore, when a dealer is deducting any amount of input tax paid by him on his purchases, he must ensure that he is doing so in strict compliance with the procedure prescribed under the Act for claiming of such credit.

As explained earlier, as per Section 10(4), a dealer shall not be permitted to deduct the input tax paid by him unless, at the time of filing his returns declaring such purchase, he is in possession of a tax invoice raised by the selling dealer in accordance with Section 29 of the Act. Accordingly, in order to deduct input tax paid by him on a purchase of goods, the dealer must ensure that the selling dealer has raised a valid tax invoice, which is in accordance with the requirements of Section 29 read with Rule 29 of the KVAT Rules. It is pertinent to note that Rule 29 of the KVAT Rules requires the selling dealer to, *inter alia*, specify on the face of the invoice, his name, address, and registration number (TIN). Therefore, if a selling dealer raises a tax invoice, and the said invoice specifies his TIN number, then it would be reasonable for the purchasing dealer to presume that the selling dealer is registered under the provisions of the KVAT Act. Interestingly, there are no other provisions of the Act that specify the procedure for availing of input tax credit. Therefore, it would be safe to assume that, if a dealer has complied with the requirements of Section 10(4), its claim of deduction of input tax credit would be in accordance with the provisions of the KVAT Act. Accordingly, if a purchasing dealer can prove that he has complied with the requirements of Section 10(4) read with Section 29, he can be said to have discharged his burden of proving the correctness of a claim of input tax credit.

With great respect, the judgments of the Tribunal in M.K. Agro Tech and Nisha B. Patel appear to be incorrect and without any legal basis. In fact, in Nisha B. Patel, the KAT acknowledges that it was the supplying dealers who had fraudulently intended to evade payment of tax. In such circumstances, the machinery provisions of the KVAT Act provide for the recovery of any unpaid amount of taxes from the selling dealer and not from the purchasing dealer who has effected bona fide purchases. Therefore, if a dealer is found to have not paid any amount of tax, the scheme of the KVAT Act is that such dealer must be assessed/reassessed under the provisions of Sections 38 or 39. The selling dealer who has fraudulently evaded payment of tax would also be liable to be penalized under various provisions of the Act. However, no provision of the Act suggests that the purchasing dealer can be foisted with the liability to pay any amount of tax that is not paid by the selling dealer.

Moreover, on a reading of the judgments of High Courts across the country that have been referred to earlier, it is clear that the weight of authority is in favour of the purchasing dealer being permitted to avail input tax credit in cases where the selling dealer has not discharged his tax liability. In my opinion, the judgment of the Karnataka High Court in Milan Plywood lays down the correct proposition of law in this regard, namely, that unless it is proved that the transactions in question are bogus or fraudulent, the purchasing dealer should not be denied the benefit of deducting the input tax collected from him.

Conclusion.

Despite the numerous judgments which hold that the purchasing dealer cannot be denied the benefit of input tax credit merely because the selling dealer has not discharged his tax liability, assessing authorities across the State have consistently relied on Section 70 in order to disallow such input tax credit claimed by dealers. As explained earlier, Section 70 merely casts the burden of proving the correctness of a claim of input tax credit on the dealer. It does not specify how such burden is to be discharged. In the absence of any provision stipulating how a dealer is required to support his claim of input tax credit, the only logical conclusion would be that the dealer must ensure that the purchases are effected in accordance with the provisions of the KVAT Act, and that he has availed the input tax credit as per the provisions of the Act. To expect the purchasing dealer to thereafter ensure that the selling dealer complies with his statutory obligations and pays his tax liability is not only unreasonable but also without any statutory basis. With the number of such cases being litigated across the State, one can hope that the Karnataka High Court settles the law in this regard at the earliest, and holds that Section 70 does not require the purchasing dealer to prove that the selling dealer has discharged his tax liability in order to prove the correctness of his claim of input tax credit.

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

ಅಕ್ಷಯ ಹೌಸಿಂಗ್ ಕೊ-ಆಪರೇಟಿವ್ ಸೊಸೈಟಿ ಲಿಮಿಟೆಡ್

**Akshaya Housing Co-operative Society Ltd.**

#16, 2nd Floor, Apple Villa, Behind SP Complex,
Lalbagh Road, Bengaluru - 560 027

# Society Site Available Near H. Cross,

## Near by Hosakote, Devanahalli, Bangalore

**Advantages:**

- **More than 3500 Acre Industrial Area** Near by to Layout
- Kolar - Airport Byepass Road attached
- **Near Narasapura** / Vemagal **Industrial Area**
- 15 minutes drive from Hosakote
- **30 minutes from KR Puram**
- Each site having all facilities i.e. 40 ft main road, 30 ft cross road, water, green plantation, under ground drainage, park, temple, compound wall, electricity etc.
- **30 minutes from International Airport**
- Large Industries like Tata, GSK already started.
- **Potential High growth**
- Sites developed as per DTCP
- **Instalment Payment option**
- Low down payment option
- Clear Legal Titles

## Rate of Plots

| Site Size | Plot Area | Rate per Sq. ft. | Initial Instalment | 2nd Instalment | 3rd Instalment | 4th Instalment | 5th Instalment | Total Amount |
|---|---|---|---|---|---|---|---|---|
| 30" x 40" | 1200 | 600 | 1,20,000 | 1,50,000 | 1,50,000 | 1,50,000 | 1,50,000 | 7,20,000 |
| 40" x 60" | 2400 | 600 | 2,40,000 | 3,00,000 | 3,00,000 | 3,00,000 | 3,00,000 | 14,40,000 |

**CA. Babu K. Thevar**
President

**Sri. Chethan**
Vice President

**For further details contact: 81239 08037 / 080 - 4130 0855**

**Akshayahousing.in**

Advt.

# 28th KSCAA Annual Conference

on Saturday & Sunday 5th & 6th March 2016

Jnana Jyothi Convention Centre, Central College Campus, Bengaluru

## CONFERENCE COMMITTEES

### ADVISORY BOARD

CA. O.R. Panduranga
CA. N.C.S. Raghavan
CA. Y.S. Daglia
CA. S.A. Narayana Shetti
CA. Umesh Bolmal, *Belagavi*
CA. B.P. Rao
CA. K. Ravi
CA. K. Raghu
CA. Venkataramani S.
CA. Prabhudeva Aradhya
CA. M.S. Ranganath
CA. R. Anand
CA. A.S. Vishnu Bharath
CA. K.S. Madhavamurthy
CA. P.R. Suresh
CA. Madhukar N. Hiregange
CA. Nityananda N.
Dr. N. Suresh
CA. Shivasubramanyam A.B.
CA. I.S. Prasad
CA. Ramachandran Mahadevan
CA. Goutham Prakash K.M.
CA. Mallinath Nainegli
CA. M.C. Ramakrishna
CA. K. Viswanath
CA. Murugesh H.B.M.

### RECEPTION COMMITTEE

CA. Laxmikantha M.V
CA. K.Y. Ningoji Rao
CA. T.R. Anjanappa
CA. Shambu Sharma
CA. Vinay Mruthyunjaya
CA. T.C. Mehta
CA. A. Rajgopal
CA. Lalit M. Sharma
CA. Ashok Raghavan
CA. Prakashchand S.
CA. Ganapat Raj C.
CA. Venkatesh Babu T R
CA. Parthasarathy S
CA. Dr. N.A. Charantimath
CA. Cotha S. Srinivas
CA. Babu K
CA. Sachitananda
CA. Ravindraraj Bhandari
CA. Ramabhadran R.
CA. Jagadish Babu
CA. Chetan Venugopal
CA. Raviprasad
CA. S. Panna Raj, *Ballari*
CA. C.R. Dhavalagi

### CONFERENCE COMMITTEE

**Chairman**
CA. Raghavendra Puranik
**Convenors**
CA. Nagappa B Nesur
CA. Raghavendra Shetty
CA. Ramesh Sharma
**Members**
CA. Basappa M Venkatapur
CA. Giridhara T
CA. Manjunath Bhat
CA. Yatish Y, *Mysuru*

### SPONSORSHIP COMMITTEE

**Chairman**
CA. Somashekar Hiremath
**Convenors**
CA. Sundaresha A S
CA. Sanjay Dhariwal
**Members**
CA. Niranjan Prabhu
CA. Subhash S Javali
CA. Tara Bevinje

### EXHIBITION COMMITTEE

**Chairman**
CA. Anant Mutalik
**Convenors**
CA. Kumar S Jigajinni
CA. Sandesh Salankey
**Members**
CA. Gunasheela M N
CA. Naveen K S
CA. Lingaraju M B
CA. Sreedhara Murthy P S
CA. Nayaz Pasha

### SOUVENIR COMMITTEE

**Chairman**
CA. Raveendra S Kore
**Convenors**
CA. Ghani Khan
CA. Praveen Shettar
**Members**
CA. Hemanth Shurpali
CA. Chickerur C R
CA. Kotresh H M
CA. Sharanagouda Patil, *Vijayapur*
CA. Patil S L

### PUBLICATIONS COMMITTEE

**Chairman**
CA. Maddanaswamy B V
**Convenors**
CA. Malleshappa Hullatti
CA. Somanath S Salotagi
**Members**
CA. Vishwanath S, *Tumkur*
CA. Kamalaksha K
CA. Barageshappa T P
CA. Nataraj V Angadi
CA. Naveen Kumar

### HOSPITALITY & BANQUET COMMITTEE

**Chairman**
CA. Basavaraj H.M
**Convenors**
CA. Raghavendra Shetty
CA. Santosh Kabbur
**Members**
CA. Sheshachala
CA. Mahesh Durga
CA. Suresha T
CA. G G Patil
CA. Sudhakar Pai

### TECHNICAL COMMITTEE

**Chairman**
CA. S. Krishna Swamy
**Convenor**
CA. S. Ramasubramaniam
**Members**
CA. D.R.Venkatesh
CA. Gururaj Acharya
CA. Allama Prabhu M S
CA. Prashanth G S

### ENTERTAINMENT COMMITTEE

**Chairman**
CA. Narayan Bhat
**Convenors**
CA. Ravindranath K
CA. Raghavendra Patre
**Members**
CA. B.M. Tambakad
CA. Satisha R
CA. Raghavendra M N
CA. B.M. Nagaraj, *Mysuru*
CA. Vyshak H B

### SPEAKERS CO-ORDINATION COMMITTEE

**Chairman**
CA. B.T. Shetty
**Convenors**
CA. Sujatha Raghuraman
CA. Pradeep B
**Members**
CA. Bhavya Parvathi
CA. Satish Hebbar
CA. Malakajappa Biradar
CA. Aradhya N.B., *Mysuru*
CA. Jagadeesha B.M.
CA. Kiran Inamdar, *Vijayapur*

### DELEGATES & REGISTRATION COMMITTEE

**Chairman**
CA. Pampanna B. E.
**Convenors**
CA. Chandrashekara Shetty
CA. Sukesh Patil
**Members**
CA. Virupaxi B Vantagitti
CA. Ramesh Gowda M Y, *Mysuru*
CA. Basavaraj Shirahatti
CA. Manjunath Hallur
CA. Narendra K.V., *Shivamogga*
CA. Shivaram Hegde, *Bagalkot*

### FLOOR CO-ORDINATION COMMITTEE

**Chairman**
CA. Marulasiddaiah M
**Convenors**
CA. Anant Nyamannavar
CA. Virupakshappa M Tuppad
**Members**
CA. Raju C.N.
CA. Sandhya Nagar
CA. Sanjana Hegde
CA. Kishori S Patil
CA. Amrutesh Durga
CA. Basavaraj Kusoogalla
CA. Shivanand, *Mysuru*
CA. Veerabasanna Gouda
CA. M.N. Tapashetti, *Bagalkot*
CA. Kailash Murthy

### PUBLICITY & MEDIA

**Chairman**
CA. Nithin Mahadevappa
**Convenors**
CA. Ashwin Kumar H.V.
CA. Geetha A.B.
**Members**
CA. Vijay Shetty
CA. D.B. Sajjanar
CA. Paramashiva T.
CA. Nagesh B.S., *Mysuru*
CA. Jagadeesha T.D.
CA. Veeranna Murgod, *Belagavi*

### MOFUSSIL MEMBERS CO-ORDINATION COMMITTEE

**Chairman**
CA. N.S. Ayyanagoudar, *Hubballi*
**Convenors**
CA. Shriram S.S., *Sagar*
CA. Chetan Padaki, *Dharwad*
**Members**
CA. Ajith Kumar U.B., *Udupi*
CA. Shivakumar Sambaragimath, *Belagavi*
CA. Vasanth Kumar C.R., *Shivamogga*
CA. Siddarameshwaragouda, *Ballari*
CA. Giridhar K.S., *Mysuru*
CA. Praveen Shetty, *Hassan*
CA. Seema S Mannur, *Bagalkot*
CA. Krishnamurthy Deshpande, *Dharwad*

## KSCAA EXECUTIVE COMMITTEE 2015 - 16

| | | | | | |
|---|---|---|---|---|---|
| President | CA. Dileepkumar T M | 98453 30800 | Members | CA. Kumar S Jigajinni | 94803 11197 |
| Vice President | CA. Raghavendra Puranik | 96322 45475 | | CA. Malleshappa B. Hullatti | 98450 73697 |
| Secretary | CA. Raghavendra T.N. | 98801 87870 | | CA. Ramesh Sharma | 99005 03905 |
| Joint Secretary | CA. Nagappa B. Nesur | 98867 11611 | | CA. Ravindranath K | 98450 74711 |
| Treasurer | CA. Raghavendra Shetty | 99002 14030 | | CA. Shriram S S | 96321 24981 |
| Members | CA. Ashwin Kumar H V | 99865 52202 | | CA. Sujatha Raghuraman | 99455 98565 |
| | CA. Chandrashekar Shetty | 98807 22807 | | CA Anant Nyamannavar | 95389 91480 |
| | CA. Ghani Khan | 99640 32742 | Imm.Past President | CA. Raveendra S. Kore | 99020 46884 |

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)
No. 7/8, 2nd Floor, Shoukath Building, S.J.P. Road, Bangalore - 560 002.
Ph: +91 80 2222 2155 | Fax: 2227 4679 | kscaablr@gmail.com | Website: www.kscaa.com

# Workshop on Issues in IT Assessments at Tumkur

# Chartered Accountancy Course Awareness Programme at Bagalkot

"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 ®

No. 7/8, 2nd Floor, Shoukath Building, S.J.P. Road, Bangalore - 560 002.

# 28th KSCAA Annual Conference

on Saturday & Sunday
**5th & 6th March 2016**

**Jnana Jyothi Convention Centre**
Central College Campus, Bengaluru

## Programme Structure

### Saturday 5th March 2016

| Time | Programme |
|---|---|
| 08.30 AM | Registration |
| **INAUGURAL SESSION** | |
| 09.15 AM | Inaugural Address by Chief Guest<br>Release of Publications, Release of Souvenir |
| 10.30 AM | Inauguration of Exhibition & Tea Break |
| **FIRST TECHNICAL SESSION** | |
| 11.00 AM | **Start-ups – Analysis & Opportunities**<br>• Funding<br>**Mr. Ganapathy Venugopal**<br>*Co-founder & CEO, Axilor Ventures*<br>• Valuation<br>**CA. Anjana Vivek**<br>• Statutory & Taxation<br>**CA. P.V. Srinivasan** |
| 01.30 PM | Lunch Break |
| **SECOND TECHNICAL SESSION** | |
| 2.30 PM | **Reporting and Compliance requirements-Auditor's perspective**<br>• Audit reports & IFC<br>**CA. Gururaj Acharya**<br>• Ind. AS<br>**CA. Vinayak Pai** |
| 4.15 PM | Tea Break |
| **THIRD TECHNICAL SESSION** | |
| 4.30 PM | **Practical Issues in Income Tax**<br>• Open House Q & A Session<br>**CA. Padamchand Khincha**<br>**CA. A. Shankar**<br>**CA. Dr. R.B. Krishna** |
| 6.45 PM | **Kutumbotsava**<br>– Family Entertainment Programme |
| 8.30 PM | Bhoori Bhojana<br>(Family Dinner) |

### Sunday 6th March 2016

| Time | Programme |
|---|---|
| 8.00 AM | Break Fast |
| **HEALTH / WELLNESS SESSION** | |
| 9.15 AM | **Stress Management for Professionals**<br>**Dr. C.R. Chandrashekar**, *Psychiatrist & Author* |
| **FOURTH TECHNICAL SESSION** | |
| 10.15 AM | **Practical Issues of Not for Profit Organizations (NPOs)**<br>• Formation • Exemption • Assessments<br>**CA. S. Krishnaswamy**<br>**CA. Phalguna Kumar E** |
| 11.30 AM | Tea Break |
| **FIFTH TECHNICAL SESSION** | |
| 11.45 PM | **E-Commerce - Taxation Issues**<br>• VAT<br>**CA. S. Venkataramani**<br>**Dr. B.V. Murali Krishna**<br>*Joint Commissioner of Commercial Taxes*<br>• Service Tax<br>**CA. A. Jatin Christopher**<br>*Moderator:* **CA. Sanjay Dhariwal** |
| 1.30 PM | Lunch break |
| **SPECIAL SESSION** | |
| 2.30 PM | **Unbounded New Professional Opportunities - Am I Future Ready ?**<br>**CA. Madhukar Hiregange** |
| 3.15 PM | Tea Break |
| **SIXTH TECHNICAL SESSION** | |
| 3.30 PM | **Union Budget Analysis–Panel Discussion**<br>• Direct Tax<br>**CA. K.K. Chythanya, CA. K.R. Sekar**<br>• Indirect Tax<br>**CA. V. Raghuraman, CA. Rajesh Kumar T.R.**<br>*Moderator:* **CA. S. Ramasubramanian** |
| 5.30 PM | **Valedictory Session** |

### Practical Issues in Income Tax

Request participants to send their queries for the Third Technical Session in advance before 25-2-2016 to *samvit.kscaa@gmail.com*

### TAX CLINIC

One on One Interaction with Income Tax Experts for Mofussil participants on 5-3-2016.
Request participants to send their queries in advance before 25-2-2016 to *samvit.kscaa@gmail.com*

## DELEGATE FEES

(Inclusive of applicable taxes)

₹ 1800/- for CA's - if booked on or before 25.02.2016,
₹ 2200/- for CA's - if booked on or after 26.02.2016, ₹ 3000/- for NON CA's,
₹ 1500/- for CA Students - 150 seats only (FCFS)
Cheques/DD's in favour of KSCAA, Payable at Bengaluru

Rs. 200 rebate for outstation Delegates

• ₹ 3000/- Page Sponsor for CA's (One Delegate Complimentary)

The Fee covers Delegate Kit, Memento, Souvenir, Publications of KSCAA and Lunch (Day 1 & 2), Family Dinner on Day 1, Breakfast on Day 2 & Coffee/Tea, and Lucky Delegate & Lucky couple prizes

**This Conference will immensely benefit**

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

| CA. Dileepkumar T M | CA. Raghavendra Puranik | CA. Raghavendra T.N. | CA. Nagappa B Nesur | CA. Raghavendra Shetty | CA. Ramesh Sharma |
|---|---|---|---|---|---|
| President | VP & Chairman, Conf. Committee | Secretary | Convenor | Convenor | Convenor |
| +91 98453 30800 | +91 96322 45475 | +91 98801 87870 | +91 98867 11611 | +91 99002 14030 | +91 99005 03905 |

For more details, Contact: Ph: +91 80 2222 2155 | Fax: 2227 4679 | kscaablr@gmail.com | Website: www.kscaa.com



**KSCAA NEWS BULLETIN** English Monthly Printed, Published & Edited by CA. Dileepkumar 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.co.in**
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. Dileepkumar T M**