



# KSCAA NEWS BULLETIN

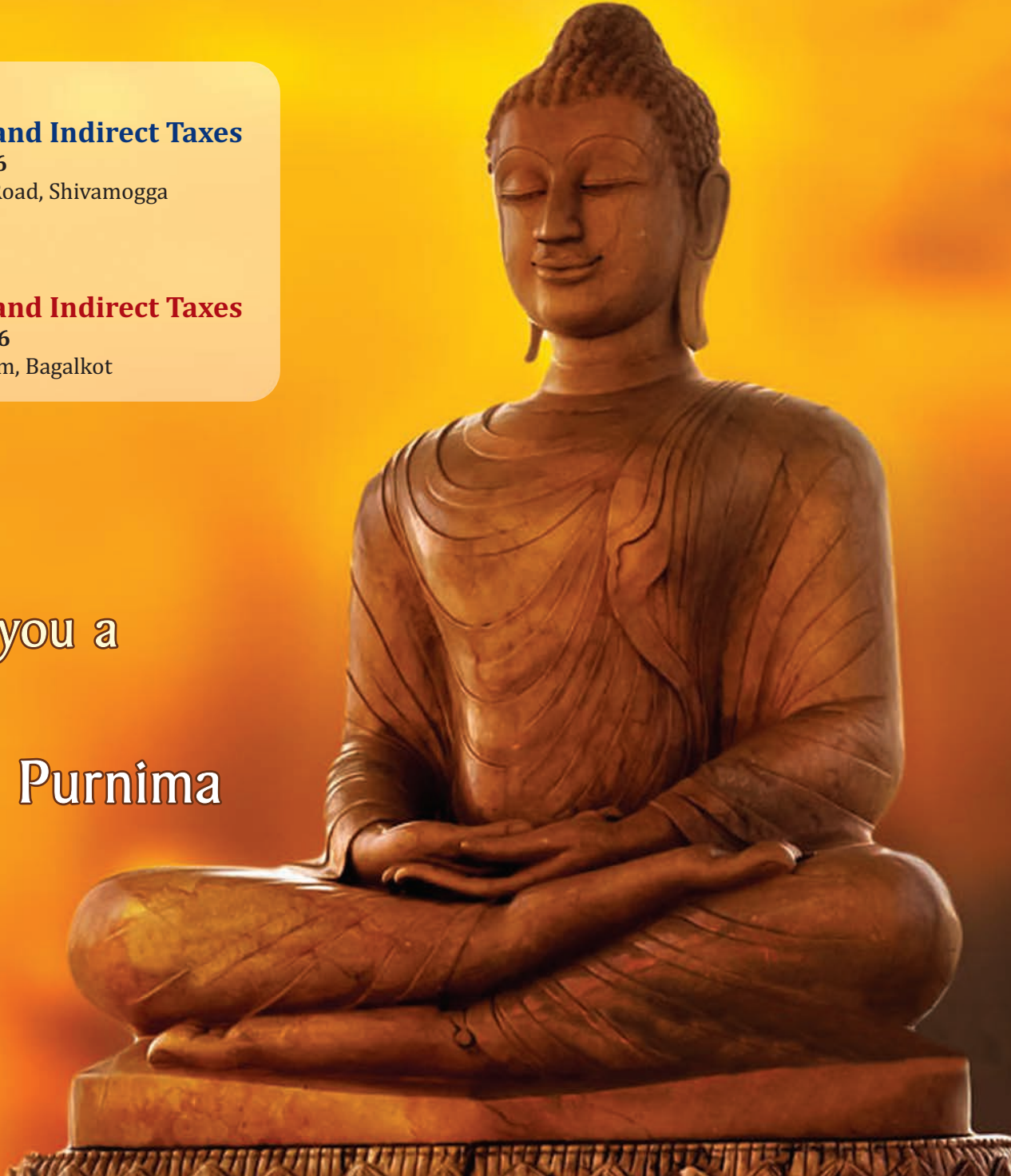


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English Monthly  
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- **Seminar on  
Direct Taxes and Indirect Taxes**  
on 21st May, 2016  
at Star Crew, B H Road, Shivamogga
- **Seminar on  
Direct Taxes and Indirect Taxes**  
on 25th May, 2016  
at BVVS Auditorium, Bagalkot

Wishing you a  
blessed  
Buddha Purnima



# President's Communique

Dear Professional Colleagues,

We would like to inform you that the Association has challenged the single bench order of the Honorable High Court of Karnataka dated 29<sup>th</sup> March 2016 in regard to inclusion of Cost Accountants and Cost Accountant firms for audit of Co-operative societies before the Division Bench of the Honorable High Court of Karnataka on 28<sup>th</sup> April 2016 and the Writ Appeal is numbered as 1023 to 1028 of 2016 (CS-RES). Considering its national ramifications, we had approached Institute of Chartered Accountants of India, New Delhi for support. Legal Department of ICAI had given their view-points on the above cited order which were really helpful in strengthening our appeal before the Division Bench. I would be failing in my duty, if I don't acknowledge the efforts of Central Council Member CA. Madhukar N. Hiregange for his timely intervention and ICAI Legal team for legal support in this matter. However, Association expects bigger role and support of ICAI in this matter. As you are aware fighting such legal battles costs considerable amount of money in the form advocate fees, court fee, senior counsel's appearance fees etc. and we currently anticipate such costs to be approximately Rs.20 Lakhs. Association always took the lead whenever our professional interests are being threatened, however we are financially constrained to fund these legal costs on its entirety. Therefore, I humbly appeal to all the members to generously contribute to the legal fund of the Association and support in its endeavor to protect members' interests. Formal appeal is published in the official website of the Association – [www.kscaa.com](http://www.kscaa.com) and elsewhere in the News Bulletin as well.

CBDT vide Circular No. 13/2016 dt. 9th May, 2016 has provided final opportunity to the taxpayers to regularize their pending income-tax returns pertaining to the Assessment Year's 2009-2010 to 2014-2015 which were filed as per provisions of section 139 of the Act but were declared Non-est / have remained pending for verification just for want of receipt of a valid ITR-V Form at CPC, Bengaluru. In spite of granting relaxation of time for submitting ITR-V Form on various occasions, a large number of such electronically filed returns still remain pending with the income-tax Department for want of receipt of a valid ITR-V Form at CPC, Bengaluru from the taxpayers concerned. In case the taxpayer concerned does not get his return regularized by furnishing a valid verification (either EVC or ITR-V) till 31.08.2016, necessary consequences as provided in law for non-filing the return may follow. However, this relaxation shall not apply in those cases, where during the intervening period, the Department has already taken recourse to any other measure as specified in the Act for ensuring filing of tax return by the taxpayer concerned after declaring the return as Non-est. Members are requested to educate their clients accordingly.



In a major relief to tax deductors, CBDT has amended the rules regarding TDS deposit due date and filing of various TDS statement / returns vide notification number 30/2016 dated 29<sup>th</sup> April 2016. The new notification / rules is applicable from 1<sup>st</sup> June 2016 and effective for financial year 2016-17 onwards.

As per new rules, discrimination between Government deducator and other deductors has been removed and single due date has been prescribed for both categories of deductors. The due dates for filing Form 24Q, 26Q and 27Q has been extended to 31<sup>st</sup> July for the first quarter, 30<sup>th</sup> September for the second quarter, 31<sup>st</sup> January for the fourth quarter and 31<sup>st</sup> May for the fourth quarter. The Due date for generating Form 16A shall be 15<sup>th</sup> August for the first quarter, 15<sup>th</sup> November for the second quarter, 15<sup>th</sup> February for the third quarter and 15<sup>th</sup> June for the fourth quarter. The due date for depositing TDS on immovable property under Section 194IA is increased from 7 days to 30 days from the end of the month in which deduction is made. Members are requested to educate their clients and trade accordingly.

## Upcoming programs of the Association

1. Association is hosting a "Seminar on Direct Taxes and Indirect Taxes" with Shimoga District Chartered Accountants Association & Shimoga CPE Chapter on Saturday 21<sup>st</sup> May 2016 at Star Crew, 3rd Floor, SS Complex Harsha Show Room, B H Road, Shivamogga – 577202.
2. Association is organizing a "Seminar on Direct Taxes and Indirect Taxes" jointly with Bagalkot District Chartered Accountants Association and Vijayapur District Chartered Accountants Association on Wednesday 25<sup>th</sup> May 2016 at BVVS Auditorium, Bagalkot.

The details of the above programs are published elsewhere in the News Bulletin. I would request all the members at Shivamogga, Bagalkot and Vijayapur to participate in the above seminars and make it a grand success.

## Words of Inspiration

*"There are only two mistakes one can make along the road to truth; not going all the way, and not starting."* – **Goutham Buddha, Founder of Buddhism**

*"Though shall not steal nor kill; Not speak a lie; Be angry with no one, nor scorn another man; nor glory in thyself; nor others hold you to blame, this is your inward purity; this is your outward purity; this is the way to win our Lord."* – **Basavanna, Social Reformer.**

In service of the Profession,

**CA. Dileep Kumar T M**  
President

# KSCAA

## News Bulletin

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#### 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 Association.

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

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Website: [www.kscaa.com](http://www.kscaa.com)

## 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

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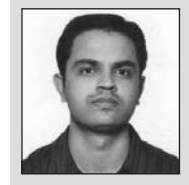
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Advt. material should reach us before 5th of the month,  
15% rebate if booked for minimum of 3 issues.





## EXEMPTED GOODS AND EXEMPTED SERVICES – SERVICE TAX - CONFUSION GALORE



CA Madhukar N Hiregange and CA Mahadev.R

Manufacturers or service providers engaged in providing taxable and exempted activities avail cenvat credit. One big task would be compliance under Rule 6 of CCR 2004. The provisions of credit have gone through a number of restrictive attempts and attempts to rationalise the restrictions. Even in this Finance Bill 2016, significant change were made with introduction of new explanation expanding the scope of exempted services. We have tried to analyse the impact of these changes.

### *Expansion in scope of exempted goods*

The scope of exempted goods was expanded in Finance Act 2015 to include non-excisable goods cleared for a consideration from the factory. The value of such non-excisable goods would be the invoice value. In case invoice value is not available, the value of non-excisable goods would be determined by using reasonable means in accordance with valuation principles contained in Excise Act and the Valuation Rules.

It may be noted that the definition of 'exempted goods' does not include non-excisable goods even now in the definition of 'exempted goods' in Rule 2 of CCR 2004. The discussed amendment is only for the purpose of Rule 6. There were also many disputes in respect of reversal of credits pertaining to non-excisable goods. All these have led to expansion of scope of exempted goods.

The term 'non-excisable goods' is not defined in the Central Excise provisions. However, the definition of 'excisable goods' has been provided under Section 2(d) of the Central Excise Act to mean goods specified in first and second schedule to the Central Excise Tariff Act, 1985 (CETA) as being subject to a duty of Excise and includes salt. Therefore, goods finding entry in CETA but with no rate of excise could be considered as non-excisable goods. Electric energy is the best example for this. Following are few issues which are cropping up due to this amendment:

- a) An assessee may also goods such as used oil, used packing materials, barrels which are all not manufactured along with other dutiable goods. Now the question is whether such goods should be treated as non-excisable goods.

- b) The amendment is through an explanation from 1<sup>st</sup> March 2015. However, it is not clear if the amendment is prospective or retrospective.
- c) The term consideration has not been discussed anywhere. Therefore, in case invoice is not issued, ascertaining of values for non-excisable goods would lead to divergent views. When the invoice is raised, then also department could question valuation especially in case of related party transactions.

### *Expansion in scope of Exempted services*

In Finance Act 2016, (Not. no. 13/2016-CE NT) expanded the scope of exempted services for the purpose of Rule 6 by stating that 'exempted services' would include an activity, which is **not a 'service'** as defined in Section 65B(44) of the Finance Act, 1994. The value to be considered is invoice/ agreement/ contract value and where such value is not available, such value needs to be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act and the Rules.

This amendment has put the assessee in dilemma as computation of eligible Cenvat credit amount in case of common services would be depending on value of exempted services. In terms of Section 65B(44) of the Finance Act, any activity carried out by a person for another for consideration is a service and includes a declared services. This definition excludes following activities which would not be considered as service:

- (i) Transfer of title in goods / immovable property by way of sale, gift or in any other manner;

(Contd. in page 8)



# DUAL LEVY OF ENTERTAINMENT TAX AND SERVICE TAX - ASPECT THEORY

Vikram A. Huilgol, *Practicing Advocate*

## Introduction.

On March 22, 2016, in Amusement Parks Owners' Association v. Union of India, WP (C) No. 18328/2015 & connected matters, the Kerala High Court dismissed a batch of writ petitions filed by amusement park owners challenging the power of the Union to levy service tax on the providing of access to amusement facilities. The assessee had challenged the levy of service tax on the providing of access to amusements on the ground that the levy of service tax encroached on the State's power to levy tax on amusements under Entry 62 of List II of the VII Schedule ("the State List") to the Constitution of India. Rejecting the contentions raised by the assessee, the Kerala High Court relied on the "aspect theory," and held that both the Union and the States were permitted to tax the same transaction, namely, the providing of access to amusements, as it was permissible to levy more than one tax on separate and distinct aspects of a transaction. This article briefly analyzes the Kerala High Court's judgment dated 22.03.2016, as well as some of the leading judgments on the aspect theory. The article does not comment on the correctness, or otherwise, of the Kerala High Court's judgment since the Karnataka High Court has directed issuance of notice to the Union in an identical writ petition filed by an amusement park in Karnataka, and it would be inappropriate to express my views on an issue that the High Court is currently seized with.

## Background.

Entry 62 of List II of the State List read with Article 246(2) empowers the States to make laws with respect to "taxes on luxuries, including taxes on entertainments, amusements, betting and gambling." Therefore, States have the exclusive power to levy tax on luxuries, which includes entertainments and amusements. Pursuant to this power, the State of Kerala enacted the Kerala Local Authorities Entertainments Tax Act, 1961 ("the KLAET Act"). Similarly, pursuant to the power conferred by Entry 62, the State of Karnataka enacted the Karnataka Entertainments Tax Act, 1958 ("KET Act"). In

Kerala, an annual entertainment tax is payable on the basis of the investment made in the project, whereas in Karnataka, tax is payable under Section 4-E of the KET at the rate of 5% on each payment for admission to the amusement facility.

As regards service tax, the negative list regime came to be introduced under the Finance Act, 1994 ("the Finance Act") with effect from July 1, 2012, and as a result of the introduction of the said regime, service tax came to be leviable on the value of all services provided in the taxable territory of India, except those services specified in the negative list under Section 66-D. The negative list of services, *inter alia*, included under clause (j) of Section 66-D, "admission to entertainment events or access to amusement facilities." "Amusement facility" is defined under Section 65-B(9) to mean "a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places." Consequently, by reason of inclusion of clause (j) of Section 66-D, no service tax was payable by amusement park owners on the sums received for providing access to amusement parks, arcades, parks, and similar recreational facilities.

However, vide the Finance Act, 2015, the provisions of which were notified to come into force with effect from June 1, 2015, clause (j) of Section 66-D was omitted. As a result of the said omission from the negative list of services, service tax came to be payable on sums received for providing "access to amusement facilities." In other words, by virtue of the deletion of clause (j) of Section 66-D, providing access to amusement facilities no longer fell within the purview of the negative list of services and the said activity, therefore, came to be taxable under the Finance Act.

## Kerala High Court Judgment.

The Amusement Park Owners' Association filed writ petitions before the High Court of Kerala challenging the levy of service tax on the providing of access to amusements, primarily on the ground that the said levy was in excess of the Union's power to levy service tax, and that the levy of tax

on amusements was a subject reserved for the States under Entry 62 of the State List. In essence, the contention raised by the assesseees was that the very same transaction, that is, the providing of access to amusement parks is being subject to dual levies, and that the same is impermissible since taxes on entertainments and amusements can only be levied by the States pursuant to Entry 62 of the State List.

The Union defended the validity of the levy by relying, essentially, on the aspect theory. In short, the argument of the Union was that there are two distinguishable aspects involved – one, the services offered by the amusement parks, on which service tax is being levied, and the other, the amusements and entertainment that is enjoyed by the customers, on which entertainment tax is leviable. Therefore, according to the Union, since the Union and States are taxing two distinct and separate aspects, there is no encroaching by the Union on the power reserved for the States, and even if there is any overlapping, the same is only incidental and does not denude the power of the Union to levy service tax on the services being provided by the amusement park owners.

After a detailed analysis of the law on the issue and, in particular, the aspect theory, the Kerala High Court held as under:

*“We have seen that there is no conflict between the two entries, which are fields of legislation. The two aspects taxed by the respective legislatures are the ‘service’ and ‘amusement’. The tax imposed by the Union Parliament, in pith and substance, is also one of the services offered by the petitioners. The Court does not find any trenching of the Union Parliament on the power conferred by the State, in fact or in law, since the respective legislatures tax two different aspects. The incidental overlapping, if at all, in only to be ignored going by the above cited precedents of the Hon’ble Supreme Court.”*

The Kerala High Court, accordingly, relied extensively on the aspect theory laid down by the Supreme Court in a number of judgments, upheld the power of the Union to levy service tax on the providing of amusements, and dismissed the writ petitions.

#### Discussion on Aspect Theory.

Article 246(1) of the Constitution states that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the VII Schedule (“the Union List”).

Article 246(2), on the other hand, reserves exclusive power to the States to make laws with respect to any of the matters enumerated in the State List. In Gujarat Ambuja Cements Ltd. v. Union of India, (2005) 4 SCC 214, the Supreme Court explained that under Article 246, read with the Union and State Lists, “there is a complete and careful demarcation of taxes in the Constitution, and there is no overlapping as far as the fields of taxation are concerned.” According to the Court, the mutual exclusivity which has been reflected in Article 246 means that “taxing entries must be construed so as to maintain exclusivity,” and “although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on a subject-matter which a fair reading of the entry does not cover.” The Court further observed that, “if in substance, the statute is not referable to a field given to the State, the Court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field.” In short, the law is clear that when a field of taxation has been reserved by the Constitution for either the Union or the States, the Courts would not permit the other to encroach upon that sphere.

In Federation of Hotel & Restaurant Association of India v. Union of India, (1989) 3 SCC 634, the assesseees therein had contended that the levy of expenditure tax by the Union on a certain class of hotels and lodging houses, pursuant to its residuary taxing power under Entry 97 of the Union List, encroached upon the State’s power to levy tax on luxuries under Entry 62 of the State List. Rejecting the assesseees’ contentions and upholding the validity of the levy of expenditure tax on hotels and lodging houses, the Supreme Court observed as follows:

*“Wherever legislative powers are distributed between the Union and the States, situations may arise where the two legislative fields might apparently overlap. It is the duty of the courts, however difficult it may be, to ascertain to what degree and to what extent, the authority to deal with matters falling within these classes of subjects exists in each legislature and to define, in the particular case before them, the limits of the respective powers.*

[...]

*31. Indeed, the law ‘with respect to’ a subject might incidentally ‘affect’ another subject in some way; but that is not the same thing as the law being on the latter subject. There might be overlapping, but the overlapping must be in*

law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is an overlapping does not detract from the distinctiveness of the aspects.”

Therefore, according to the Supreme Court, despite the mutual exclusivity contemplated under Article 246, it is permissible to subject a single transaction to two or more taxes, provided there are separate and distinct taxable events that are discernable from the transaction. The Supreme Court further clarified that even if there is an overlapping, it does not detract from the distinctiveness of the aspects on which taxes are to be levied.

In Gujarat Ambuja (supra), the assessee therein had challenged the levy of service tax on goods transporters on the ground that the said levy encroached upon the State's exclusive power to levy tax under Entry 56 of the State list on “goods and passengers carried by road.” Here again, the Supreme Court rejected the assessee's contentions and upheld the Union's power to levy service tax. The relevant observations of the Supreme Court are as under:

*“There is a distinction between the object of tax, the incidence of tax and the machinery for the collection of the tax. The distinction is important but is apt to be confused. Legislative competence is to be determined with reference to the object of the levy and not with reference to its incidence or machinery.*

[...]

32. Since service tax is not a levy on passengers and goods but on the event of service in connection with the carriage of goods, it is not therefore possible to hold that the Act in pith and substance is within the States' exclusive power under Entry 56 of List II. What the Act ostensibly seeks to tax is what it, in substance, taxes. In the circumstances, the Act could not be termed as a colourable piece of legislation. It is not the case of the petitioners that the Act is referable to any other entry apart from Entry 56 of List II. Therefore the negation of the petitioners' submission perforce leads to the conclusion that the Act falls within the residuary power of Parliament under Entry 97 of List I.”

Thus, in Gujarat Ambuja, the Supreme Court upheld the constitutional validity of the levy of service tax on the ground that the State's power to levy tax on goods and passengers was a tax with respect to an aspect of the transaction that was

different from the aspect on which the Union sought to levy service tax. Similarly, in T.N. Kalyana Mandapam Association v. Union of India, (2004) 5 SCC 632, the Supreme Court rejected the assessee's contention that the levy of service tax on mandap-keepers was, in pith and substance, a tax on land and, therefore, an encroachment on the State's power to levy “taxes on lands and buildings” under Entry 49 of the State List. The Supreme Court, accordingly, upheld the Union's power to levy service tax on rentals received by mandap-keepers.

In All India Federation of Tax Practitioners v. Union of India, (2007) 7 SCC 527, the levy of service tax on chartered accountants, cost accountants, and architects was challenged on the ground that the Union was not legislatively competent to levy tax on “professions, trades, callings and employments,” as the power to tax the same was reserved for the States under Entry 60 of the State List. In this case, too, the Supreme Court upheld the power of the Union to levy service tax by relying on the aspect theory. The Court observed that, “tax on professions, etc. has to be read as a levy on professions, trades, callings, etc. as such” and, therefore, “Entry 60 which refers to professions cannot be extended to include services.” The Court further observed, in pertinent part, as follows:

*“For each transaction or contract, the chartered accountant/cost accountant renders profession based services. The activity undertaken by the chartered accountant or the cost accountant or an architect has two aspects. From the point of view of the chartered accountant/cost accountant it is an activity undertaken by him based on his performance and skill. But from the point of view of his client, the chartered accountant/cost accountant is his service provider. It is a tax on ‘services.’”*

More recently, the levy of entertainment tax by the States of Uttarakhand, Punjab, and Orissa on Direct-to-Home (“DTH” for short) services was challenged before the High Courts of Uttarakhand, Punjab & Haryana, and Orissa in Tata Sky Ltd. v. State of Uttarakhand, (2013) 62 VST 5, Tata Sky Ltd. v. State of Punjab, (2011) 37 VST 1, and Tata Sky Ltd. v. State of Orissa.<sup>1</sup> The assessee's primary contention before the High Courts was that a single taxable event cannot be brought to tax by both the Union and the States, and since the taxable event of providing DTH services was already exigible to service tax, the levy of entertainment tax on the same taxable event was unconstitutional. In short, the assessee contended that DTH

<sup>1</sup> <https://indiankanoon.org/doc/147450609/>



services can be subject to either service tax or entertainment tax, but not both. Relying on the aspect theory, the High Courts held that the Union and the State sought to levy tax on different aspects of the transaction and that, therefore, the levy of entertainment tax cannot be said to be ultra vires the State's power to levy tax under Entry 62 of the State List. More specifically, the Courts held that the Union is permitted to tax the aspect of services being rendered by the assessee, and that the levy of entertainment tax by the State was on the aspect of providing entertainments.

On reading the above judgments, it is discernable that the Courts have consistently applied the aspect theory in determining the legislative competence of the Union and the States in levying various taxes. Moreover, the pattern that emerges is that Courts have generally upheld the validity of a levy on the ground that the Union and the States are lawfully exercising their powers to tax different aspects of a transaction. However, in Bharat Sanchar Nigam Ltd. v. Union of India, (2006) 145 STC 91, the Supreme Court cautioned against the inappropriate reliance on the aspect theory by the Kerala High Court. The Supreme Court observed that "the doctrine merely deals with legislative competence," and does

not "allow the State to entrench upon the Union List and tax services by including the cost of such services in the value of the goods."

#### Conclusion.

Therefore, when examining the legislative competence of the Union or the States to levy a tax, the Courts must examine, in light of the facts of the case before it, whether two or more aspects truly emerge from a single transaction. If two distinct aspects are not discernable and either the Union or the States are, in pith and substance, encroaching upon a field reserved for the other, then it is the duty of the Courts to strike down the levy. The Kerala High Court, in its judgment dated 22.03.2016, found that two distinct aspects can be discerned when access is provided to an amusement facility, and that, therefore, the Union and the States are permitted to levy service tax and entertainment tax, respectively, on the same transaction. It now remains to be seen how the Karnataka High Court will decide the issue.

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## **EXEMPTED GOODS AND EXEMPTED SERVICES – SERVICE TAX - CONFUSION GALORE**

*(Contd. from page 4)*

- (ii) Transaction in money or actionable claim;
- (iii) Provision of service by an employee to employer;
- (iv) Fees taken in any Court or tribunal established under any law.

This amendment therefore is illogical as an activity cannot be said to be an exempted service unless it is service first. Strict interpretation of this amendment would bring many assessee into Rule 6 compliance. For example, an assessee who is exclusively engaged in manufacturing of excisable goods also sells one immovable property as one time affair. He would be required to consider such sale as exempted service and the value would be invoice / contract value which could be huge and sometime could be more than turnover of manufactured goods.

Further few other examples which are could lead to different interpretations and litigation:

- (i) Sale of flats by developers before completion certificate

with service tax and sale after completion certificate without service tax. In this sale of flats after completion would be treated as 'exempted' as it is outside purview of 'Service' definition.

- (ii) Interest income earned on deposits.
- (iii) Trading of goods is also not a service. Department could argue that the entire value should be taken as 'exempted service' even though one could argue that only margin or 10% of cost to be considered as exempted value as clarified.

**Conclusion:** Central Government has taken few good initiatives and seems to have spent considerable time to amend various provisions. However, there are few changes which have muddied the waters.

The assessee could make representations through associations demanding suitable changes. Alternatively, clarification could be sought from the CBEC. The Government needs to either modify or remove the amendment. Clarification on issues may or may not help the already hazy area of reversal of credit.

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# SUB CONTRACTOR DEDUCTIONS BY THE WORKS CONTRACTOR UNDER THE KVAT LAW



CA B.G. Srikanth Acharya and CA Annapurna Kabra

## Who is a Sub-Contractor?

A Subcontractor is a person or a business which has a contract (as an “Independent contractor” and not an employee) with a contractor to provide some portion of the work or services on a project which the contractor has agreed to perform. In building construction, subcontractors may include such trades as plumbing, electrical, roofing, cement work and plastering etc.

## Regular Scheme Works Contractor:

### DEDUCTIONS OF SUB CONTRACTOR

As per Rule 3(2) of the Karnataka VAT Rules, 2005, the taxable turnover shall be determined by allowing :

(i-1): All amounts paid or payable to sub-contractors as the consideration for execution of works contract whether wholly or partly.

Provided that no such deduction shall be allowed unless the dealer claiming deduction produces document in proof that the sub contractor is a registered dealer liable to pay tax under the Act and the turnover is such amounts is included in the return filed by such sub contractor.

Provided further that no such deduction shall be made where deduction of input tax is claimed in respect of tax paid to any sub contractor.

### Input Tax Restrictions

Section 11( C) (i), Input tax shall not be deducted by any dealer executing a works contract in respect of the amount paid or payable to any sub contractor as the consideration for execution of part or whole of such works contract for him that is claimed as deduction.

## Works contractor under the Composition Scheme:

Section 15(5b) states that in case of a dealer executing works contract and opting for composition of tax under sub-section (1), no tax by way of composition shall be payable on the amount payable or paid to a sub-contractor as consideration

for execution of works contract whether wholly or partly and such amounts shall be deducted from the total consideration of the works contract executed on which an amount as notified is payable under sub-section (1) by way of composition in lieu of the tax payable under the Act subject to production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that such amounts are included in the return filed by such sub-contractor.

By analyzing the above provisions of the law the main contractor irrespective of whether such dealer is in regular scheme or composition scheme can claim sub contractor deductions. But to claim the sub contractor deduction the following conditions should be fulfilled:

- Such sub contractor should be a registered dealer liable to pay tax under the Act.
- The turnover of such amount is included in the return filed by such sub-contractor.

The sub contractor will declare in his return the turnover pertaining to all the works contract executed. . The Sub contractor would have declared the turnover in different month from the month in which main contractor would have claimed the deductions. There is no specific statutory format of obtaining sub contractor declarations under the KVAT law. The main contractor is obtaining the sub contractor self declarations and furnishing to the Assessing officer during assessments.

The reconciliation has become a difficult task to the department and dealer for claiming the sub contractor deductions. In certain instances the Sub contractor has declared the turnover in preceding months and the main contractor would have claimed the deductions in future months. And also the subcontractor would have declared the turnover in future months and the main contractor would have claimed the deductions in preceding months.

Also it is difficult to trace the sub contractors who have executed the work for the completed projects and therefore

in many instances the main contractor will not get the benefit of sub contractor deductions even though the payments are made to the sub contractor with the taxes as charged by the sub contractor. Also in many instances the sub contractor are deregistered and accordingly the sub contractor deductions are disallowed. The burden of proof is on the main contractor and not on the sub contractor. In some instances the same sub contractor will be works contractor and service provider and accordingly the deductions claimed by the main contractor should be reconciled with the turnover declared by the sub contractor.

There is carry forward of sub contractor deductions in case if the total turnover is less than the deductions claimed by the Main works contractor. And such carry forward of sub

contractor deductions will be adjusted only against the total turnover as the case may be. But in case of individual reconciliation of sub contractor with the carry forward sub contractor will also create disparity for claiming the sub contractor deductions.

Therefore to avoid all the hassles to claim the sub contractor deduction by the main contractor it is suggested that there should be statutory form to be introduced under the Karnataka Value Added Tax law as introduced in other states to avoid the disputes and disparity in law.

Authors can be reached on  
query@dnsconsulting.net

### KSCAA WELCOMES NEW MEMBERS - APRIL 2016

Sl. No.	Name	Place
1	Mahesh V	Bangalore
2	Shreelakshmi .S. Hegde	Bangalore
3	Bhartesh Mehta	Bangalore
4	Bharath Bhushan Bothra	Bangalore
5	Rajanna R	Bangalore
6	Vinay Kumar N	Bangalore
7	Bishnu Kumar Agarwal	Bangalore
8	Jignesh Kamalkant Vasavada	Bangalore
9	Chandra Prakash Jain T	Bangalore
10	Avadhesh Bahety	Bangalore
11	Divya S	Bangalore
12	Prasanna K. Hegde	Bangalore

### KSCAA Legal Fund - Contributors

(April 2016)

Sl. No.	Name	Amount (Rs.)
1	M/S. MSSV & CO	50,000
2	M/S. SSB & ASSOCIATES	10,000
3	M/S. RAJU & PRASAD	5,000
4	CA. ACHARYA K.G.	5,000
5	CA. ANANT NYAMANNAVAR	5,000

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

### OBITUARY



We deeply regret to inform sad demise of  
**CA Shekharayya Hiremath**

May his soul rest in peace.



# INDIRECT TAXES UPDATE – APRIL 2016

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



## FOR THE MONTH OF APRIL 2016:

### Circulars / Clarifications / Notifications

#### 1) **Cenvat Credit Rules, 2004**

a) Rule 4: Cenvat credit of service tax on paid in a financial year, on the onetime charges payable in full upfront or in instalments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years:

a) however, where such assignment is transferred to another person, balance credit subject to maximum of service tax payable may be availed in the year of such transfer

b) Rule 6:

i) Where an assessee opts to pay 6%/7% of value of exempted goods or exempted services, the payment is restricted to maximum of the credit available as at the beginning of the relevant month or quarter

ii) Exempted services include an activity which is not a service in terms of Section 65B(44) of Finance Act, 1994. This explanation is amended to provided that such activity is considered as exempted services if such activity has used inputs or input services.

#### c) Notifications

#### **Amendment of Mega Exemption Notification No.25/2012-ST:**

**Notification No. 22/2016 -ST dated 13.4.2016:** The following new exemptions have been inserted in the Mega Exemption Notification No.25/2012-ST as follows:

1. Sl. No. 54: Services provided by Government or a local authority to another Government or a local authority have been exempted vide Entry No. 54 in Notification No. 25/2012-ST. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of

clause (a) of section 66D of the Finance Act, 1994.

2. Sl. No. 55: Services provided by Government, local authority by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide Entry No. 55.

3. Sl. No.56: Services provided by Government or a local authority where the gross amount charged for such service does not exceed Rs 5000/-have been exempted vide Entry No. 56. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed Rs. 5000/-in a financial year.

4. Sl. No.57: Fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into with Government or local authority have been exempted vide Entry No. 57.

5. Sl. No. 58: Services provided by the Government or a local authority by way of:

(i) registration required under the law;  
(ii) testing, , calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide Entry No. 58.

6. Sl. No. 59: Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide Entry No. 59. However, such allocations/auctions to categories of persons other than individual farmers would be leviable to Service Tax.

7. Sl. No. 60: Services provided by Government, a local authority or a governmental authority by way of any



activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution have been exempted vide Entry No. 60.

8. Sl. No. 61: Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016 are exempted vide Entry No. 61. However, the exemption shall apply only to Service Tax payable on one time charge, payable in full upfront or in installments, for assignment of right to use any natural resource and not to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable.
9. Sl. No. 62: Services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges are exempted vide Entry No.62.
10. Sl. No. 63: Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT) are exempted vide Entry No. 63.

**Notification No. 23/2016 -ST dated 13.4.2016:**

Rule 6(2) of the Service Tax (Determination of Value) Rules, 2006 provides for certain exclusions from value of taxable service and clause (iv) provides that “interest on delayed payment of any consideration for the provision of services or sale of property, whether movable or immovable” are not includible in the value.

Now, a proviso has been inserted to Clause (iv) vide Notification No. 23/2016 -ST dated 13.4.2016 so as to provide that interest chargeable on deferred payment in case of any service provided by Government or a local authority to a business entity, where payment for such service is allowed to be deferred on payment of interest, shall be included in the value of the taxable service.

**Notification No. 23/2016 -ST dated 13.4.2016:**

Rule 7 of the Point of Taxation Rules, 2011 has been amended vide Notification No. 24/2016 -ST dated 13.4.2016 to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which:

- (a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or
- (b) such payment is made.

Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then Service Tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then Service Tax would be payable as and when the payments are due or made, whichever is earlier.

**IMPORTANT DECISIONS**

**1. Cleartrip Pvt. Ltd. Mumbai & Others Vs. Union of India, 2016-TIOL-863-HC-MUM-ST**

On the issue of recovery of dues before adjudication and arrest before investigations, the High Court held that any recovery by coercive measures is straightway impermissible unless the investigation results into issuance of a show cause notice, an opportunity to the Petitioner to resist the demand, adjudication thereof by a reasoned order and protective remedies such as appeals. Similarly, it is only upon complete investigation and following the process of law, the arrest is permissible as it is only when these investigations conclude that the authorities would be in a position to take a decision whether to launch any prosecution.

**2. M/s Kanjirappilly Amusement Park And Hotels Pvt Ltd Vs. Union of India, 2016-TIOL-856-HC-KERALA-ST:**

Assessee challenged the levy of service tax on the amusement parks on the ground that the taxes on amusement facility is covered under entry 62 of state list and the Parliament does not have power to levy tax on such activities.

The High Court held that there could be simultaneous levy of service tax as well as entertainment tax on the amusement park as the petitioners are obliged to pay entertainment tax to the State, whether or not there are entrants to the park and the service tax is payable on every entry of the customer to use the services available within the park. It was observed that the two aspects taxed by the respective legislatures are the 'service' and the 'amusement'. The tax, imposed by the Union Parliament, in pith and substance, is also one on the service offered by the petitioners and the Union did not encroach upon the power conferred on the State, in fact or in law, since the respective legislatures tax two different aspects. The incidental overlapping, if at all, is only to be ignored.

**3. N BALA BASKAR Vs. Union of India, 2016-TIOL-824-HC-MAD-ST**

The petitioner, owner of land entered into agreement with the developer to develop and construct apartment and on the basis of the understating that the petitioner and the developer would share the constructed property in an agreed percentage and the petitioner would transfer the undivided share in the land. The levy of service tax on such development was challenged by the petitioner land owner by challenging the circulars dated 10.02.2012 and 20.1.2016 issued by the Central Board of Excise and Customs (CBEC).

Writ Petition of the petitioner was dismissed on the ground that the the petitioner not being a service provider does not have locus standi to challenge the levy and also on the basis that the builder / developer has constructed the property for which the land owner instead of giving cash consideration, has offered to transfer the undivided share in land. The court also did not accept the contention of the appellant that the said activity is exchange of immovable property

**4. Simples Infrastructure Ltd. Vs. Commissioner of ST, 2016-TIOL-779-HC-KOL-ST:**

The assessee was served with show cause notice by invoking extended period of limitation on the basis of the allegation that without investigations by the department, the fact of providing taxable services would have gone unnoticed. High court quashing the notice held that a mere mechanical reproduction of the language of the proviso to Section 73(1) of the Finance Act, 1994 does not per se justify invocation of the extended period of limitation. A mere ipse dixit that the noticee willfully suppressed the material facts with intent to evade payment of service tax is not sufficient. The notice must contain particulars of facts and circumstance in support of such allegation. Even if such particulars are not included in the notice, the Department should be in a position to justify and/or substantiate its allegation of suppression of material facts on the part of the noticee.

**5. CCE Vs. M/s KALPESH TRANSPORT, 2016-TIOL-1045-CESTAT-MUM**

Department preferred appeal against a portion of the order by which demand of service tax was dropped against a proprietorship firm, as the proprietor is deceased. In this background of fact, Tribunal referring to Rule 22 of CESTAT (procedure) Rules, 1982, held that the departmental appeal would abate as appeal cannot be continued against a deceased person.

**6. M/s INDAGO Vs. CCE, 2016-TIOL-1020-CESTAT-MUM**

Assessee engaged in exporting services received the FIRC towards realisation of consideration on 13.4.2012 and the refund claim for the said period was file don 8.5.2013. The refund claim was rejected on the ground of limitation stating that the claim should have been filed within 13.4.2013. In this background, the Tribunal held that refund of the appellant being filed within 1 year from the quarter ending April 2012 to June 2012 is within time limit, hence they are entitled for the refund.

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# KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

# 7/8, 2nd Floor, Shoukath Building, SJP Road, Bangalore 560 002

Ph 080-2222 2155, 2213 0724 Telefax 080-2227 4679 email: kscaabl@gmail.com Website: www.kscaa.com

## New Membership Invited

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

### Features

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

## APPLICATION FOR MEMBERSHIP

Name (Mr. Mrs. Miss) \_\_\_\_\_

Father's Name \_\_\_\_\_

Mother's Name \_\_\_\_\_

Husband's Name \_\_\_\_\_

Membership No. of ICAI \_\_\_\_\_ Date of Registration with ICAI \_\_\_\_\_

Name of the Organisation \_\_\_\_\_

Status (Prop. / Partner / Employee) \_\_\_\_\_

Communication Address (Please tick) Office  Residence

Office Address \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Residential Address \_\_\_\_\_

Educational Qualifications \_\_\_\_\_ Date of Birth \_\_\_\_\_ Blood Group \_\_\_\_\_ Name of Spouse \_\_\_\_\_

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

Date \_\_\_\_\_ Place \_\_\_\_\_ Signature \_\_\_\_\_

Proposed by Name \_\_\_\_\_ KSCAA Membership No. \_\_\_\_\_ Signature \_\_\_\_\_

Seconded by Name \_\_\_\_\_ KSCAA Membership No. \_\_\_\_\_ Signature \_\_\_\_\_

### Membership Fee Details

Fee Payable	Ordinary Member	Life Member		Institutional Member
		Enrolment with ICAI		
		Less than 5 Years	5 years & above	
a. Entrance Fee	100	100	200	200
b. Yearly subscription	500	-	-	-
c. Life-Membership	-	1,140*	2,280*	5,700*
Total*	600	1,240	2,480	5,900

1. Cheque/Draft/Bank Transfer may be drawn in favour of 'KSCAA'. Outstation payment by Demand Draft only.

\*Inclusive of Service Tax @ 14.5%

2. The Subscription for the financial year becomes payable before 31st March every year.

3. Every member shall intimate, from time to time, all changes in their address and other particulars to be entered in the Register relating to them.

4. Enclose photocopy of ICAI Membership Certificate.

Mail to

Chairman, Membership Development Committee

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION, # 7/8, 2nd Floor, Shoukath Building, SJP Road, Bangalore 560 002

### FOR OFFICE USE ONLY

Admitted at the Meeting of the Executive Committee held on \_\_\_\_\_

Membership No. Allotted \_\_\_\_\_

President \_\_\_\_\_ Secretary \_\_\_\_\_





# KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

## APPEAL

### Dear professional colleagues and professional friends,

Chartered Accountants, Cost Accountants, Company Secretaries and Advocates have been considered as the four pillars of society, the conscience keepers, each profession with a definite role to play. Members of each profession undergo intensive training in their specific domain, and acquire expertise by experience and practice. The course curriculum, syllabus and training – all groom the persons who chose the respective profession to gain the requisite knowledge and expertise. All these Professionals have to constantly strive to keep with rapid changes that take place on day-to-day basis, and to maintain quality of their work. However, of late, we have been witnessing developments that undermine the specialized knowledge and expertise of chartered accountants in their chosen profession. Non-professionals and other-professionals are being considered for audit assignments, irrespective of the fact that they lack the requisite training and practice.

As you are aware that Section 63 of the Karnataka Co-operative Societies Act, 1959 (for short "KCS Act") was amended in Sept'2014 to include Cost Accountants and Cost Accountant firms for audit of Co-operative Societies. The reason cited by the cooperative department for this initiative is that the number of empanelled chartered accountants is not sufficient to carry out the audit of cooperative societies. We all know that out of the total number of empanelled chartered accountants, a very small percentage is actually being appointed for audits. The department whose responsibility is to ensure high level of transparency in the cooperative societies has diluted the importance of audit of societies by permitting audit by non-professionals and other professionals. Representations by Bangalore Branch of ICAI and KSCAA to the Governor before the enactment of the amendments have not been considered, and the amendment has already been passed.

Since we are forced to take legal recourse, KSCAA 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. Though our petition was dismissed, the Honorable 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 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 Court took a diametrically opposite view which is contrary to its own observation. KSCAA will be filing an appeal before the Division Bench of Honorable Karnataka High Court and ready to take up the matter to the Apex court.

We all know that fighting a legal battle costs considerable amount of money in form of advocate's fees, court fee etc. We also should be prepared to go on appeal in higher courts if necessary, to fight the case to its logical end. As you know, KSCAA always took the lead whenever our professional interests are being threatened, however organization is financially constrained to fund these legal costs on its entirety.

As this judgement has far reaching ramifications at a national level and it is a matter which affects every one of us, I appeal to all members to contribute generously to this common cause and strengthen our hands to fight the legal battle. Let us recall the beautiful words we have learnt in our school days – *"Little drops of water, little grains of sand make the mighty ocean and the beautiful land."* Let's contribute our mite to this noble cause and make our profession a winner.

Those who are willing to contribute can pay by way of cheque or online transfer to following:

Beneficiary Name – **Karnataka State Chartered Accountants Association**  
Savings Bank A/c No. – **039210011006886**  
Bank Name – **Andhra Bank, NR Road**  
IFSC/RTGS – **ANDB0000392**

**President**

**Karnataka State Chartered Accountants Association**

## Seminar on Direct Taxes and Indirect Taxes

Hosted by **Karnataka State Chartered Accountants Association®**, Bengaluru  
with **Shimoga District Chartered Accountants Association & Shimoga CPE Chapter**

on **21<sup>st</sup> May, 2016**

at **Star Crew**

3<sup>rd</sup> Floor, SS Complex Harsha Show Room, B H Road, **Shivamogga** - 577202

Programme Details	
8.45 AM	Inauguration
9.00 AM – 11.30 AM	<b>FIRST TECHNICAL SESSION</b>
	Taxation of Charitable Trusts <b>CA. Prashanth G S</b>
11.30 AM	Tea Break
11.45 AM – 2.00 PM	<b>SECOND TECHNICAL SESSION</b>
	Input Tax Credit Analysis under KVAT 2003 <b>CA. Siddeshwar Y</b>

FOR DETAILS CONTACT:

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**CA. Narendra K V**  
Deputy Convenor, Shimoga CPE Chapter  
+91 98455 72531

**CA. Dileep Kumar T.M.**  
President  
Karnataka State  
Chartered Accountants Association

**CA. K V Vasanth Kumar**  
President  
Shimoga District  
Chartered Accountants Association

**CA. Shivaswamy**  
Convenor  
Shimoga CPE Chapter

## Seminar on Direct Taxes and Indirect Taxes

Organised by **Karnataka State Chartered Accountants Association®**, Bengaluru

Jointly with **Bagalkot District Chartered Accountants Association &**

**Vijayapur District Chartered Accountants Association**

on **25<sup>th</sup> May, 2016**

at **BVVS Auditorium, Bagalkot**

Programme Details	
9.00 AM	Inauguration
9.15 AM – 11.15 AM	<b>FIRST TECHNICAL SESSION</b>
	Levy of Excise Duty on Jewellery <b>CA. Raghavendra T N</b>
11.15 AM – 1.30 PM	<b>SECOND TECHNICAL SESSION</b>
	TDS provisions under Income Tax Act <b>CA. Venkatesh D R</b>

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Karnataka State  
Chartered Accountants Association

**CA. Smt. Seema S. Mannur**  
President  
Bagalkot District  
Chartered Accountants Association

**CA. Sharanagouda Patil**  
President  
Vijayapur District  
Chartered Accountants Association