KSCAA

Karnataka State Chartered Accountants Association ®

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Together We Serve
Together We Grow

Sports & Talent Meet 2018

11th, 24th & 25th November 2018

Details inside

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From the President

Dear professional friends

May this Dussehra bring you loads of joy, success and prosperity, and may your worries burn away with the effigy of Ravana. Wishing you a year full of smiles and happiness. Let us come together to celebrate the victory of good over evil this Dussehra. May this auspicious day bring you love, luck and happiness.

Dussehra is ten days and nine nights long Hindu festival. The mark of victory of Rama over demon king Ravana and victory of Durga over Mahishasura, figuratively represents the triumph of good over evil. The festival Dussehra also represents the diversity in India, festival uniqueness is the way in which people celebrate the festival which in some parts is celebrated as Garbha, fasting by some and our State celebrates it as 'Mysore Dussehra' which is world renown.

It is sad to know that our 11th President of KSCAA, CA. Ranganath M S is no more amongst us, we express our deepest condolence to all near and dear ones' and his contribution to KSCAA is Palpable. Even at his late ages, his energy to all KSCAA activities was unmatched and this association will miss a mentor, guide and a gem among fraternity.

News Roundup

On professional front, ICAI has announced **Unique Document Identification Number (UDIN),** it has been observed in many instances that, financial statements and documents are being certified/attested by third persons in lieu of our CA members. These statements have deluded various authorities/other stake holders who rely upon them. To curb this malpractice, ICAI has availed the use of technology and implemented an innovative concept of UDIN, to secure the certificate/ attested documents by practicing Chartered Accountants. ICAI also intends to make this mandatory with effect from **1st January 2019.**

GST matter

The Government has notified the tax deducted at source (TDS) and tax collected at source (TCS) provisions under GST law wef 1st October 2018. As per the Central GST (CGST) Act, the notified entities are required to collect TDS at 1% on payments made to supplier of goods or services in excess of Rs.2.5 Lakh. Also, states will levy 1% TDS under respective state GST laws. E-commerce companies will now be required to collect up to 1% TCS while making any payment to suppliers under the Goods and Services Tax (GST). States too can levy up to 1% TCS under respective State GST (SGST) laws. The e-commerce companies and various PSUs/ Government Companies will have to quickly gear up their ERP systems to comply with these provisions.

The Government notified the GSTR-9, the GST Annual Return & GSTR-9C the GST Audit report, which will aid tax authorities in detecting tax evasion under GST. The last date for filling annual return and GST Audit Report for 2017-18 is 31st December 2018. Tax authorities at the centre and the states are relying heavily on these forms to detect tax evasion and fraudulent claims of input tax credit. This was much awaited return format by the industry, especially given the limited time frame for filing, includes elaborate reconciliation with GST Returns v. financial statements and attestation by GST auditor. After elongated tax audit season, not much relief for businesses and Chartered Accountants. Relish a short festival break, gear up for taxing times ahead.

Representations

On the representations front, we have identified the grey areas pertaining to RERA compliance and populated the same before the administrative authorities. The prominent issue being the notification of audit report format, online mechanism request, clarifications on technical issues were appraised and sought their redressal in the larger interest of our members. We feel the importance of identifying and taking up the key areas for representation on merits as against just seeking and raking multitude of solvable issues at our end. In this manner we can elevate our discernment in the eyes of administrators and live to the true billing of our profession!

You can access all our representations at www.kscaa.com. We request our members to write to us giving pointers where they need support and we are more than willing to build around it and populate before right forums.

Upcoming Events and programs

We are organizing a State Level Sports and talent meet across state on Sunday 11th November 2018 and Saturday 24th November 2018 outdoor games, Sunday 25th November 2018 indoor games at Bengaluru.

We are organizing workshop on 'GST Reconciliation and filing of Annual Return with Illustrations' on Tuesday 16th October 2018 in VVN at Bengaluru and Friday 26th October 2018 in KLE Society's Nijalingappa College, Rajajinagar, Bengaluru.

I earnestly request members to actively participate in our programs and make use of it.

The details of the programs are published elsewhere in the News Bulletin. For registrations, please visit www.kscaa.com.

Sincerely,

CA. Raghavendra Shetty
President

Together We Serve
Together We Grow

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Karnataka State Chartered Accountants Association ®
organizes

Workshop on
Key provisions and aspects relevant to GST Audit

By **CA Deepak Kumar Jain B**

On **Friday, 26th October 2018** | Time: **5 PM to 8 PM**

Venue : **Sharadha Sabhangana**
KLE Society's Nijalingappa College, NO-1040,
2nd Block, Rajajinagar, Bengaluru 560010

Fee: **Rs.350/-** (Inclusive of GST)

Discount Available for online Registration Coupon Code **DISC5**

Online Registration available at **www.kscaa.com**

Contact: **CA Sujatha Raghuraman**, Chair Person - Indirect Tax Committee, KSCAA +91 99455 98565
CA Nagappa B Nesur, Convener-Indirect Tax Committee, KSCAA, +91 98867 11611

CA Raghavendra Shetty
President

CA Kumar S Jigajinni
Secretary

For details visit: **www.kscaa.com**

Karnataka State Chartered Accountants Association ®
organizes

Workshop on
Form 3CEB and TP Compliances - Practitioner's Perspective

By **CA. Rani N R**

On **Wednesday , 24th October 2018** | Time: **5 PM to 8 PM**

Venue : **Vasavi Vidyanikethan Trust**
No-3, Vani Vilas Road, VV Puram,
Basavanagudi, Bengaluru 560 004

Fee: **Rs.500/-** (Inclusive of GST)

Discount Available for online Registration Coupon Code **DISC5**

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CA. Praveen Shettar, Convener, Direct Tax Committee, KSCAA, +91 99726 05130

CA Raghavendra Shetty
President

CA Kumar S Jigajinni
Secretary

For details visit: **www.kscaa.com**

Evidence in Income Tax Act, 1961

CA S. Krishnaswamy

"Evidence means the testimony whether oral, documentary or real, which may be legally received in order to prove or disprove some fact in dispute"

- Philpson

- 3 Conditions.
- Genuineness – explained
- Specific transactions that need rebuttable presumption.
- Presumption – in Search –not in assessment.
- Best evidence Rule

The Income-tax Act, 1961 has exacting requirements of furnishing evidence in respect of transaction that impact determination of tax liability, in particular devices that are suspect of evading legitimate taxes. A transaction may be perfectly documented but may not still stand the test of 'genuineness'. A clutch of Sections:

- Sec.68 – Unexplained Credit
- Sec. 69 - Unexplained investments.
- Sec. 69A - Unexplained money, etc.
- Sec. 69B - Amount of investments, etc., not fully disclosed in books of account.
- Sec. 69C - Unexplained expenditure, etc.
- Sec. 69D - Amount borrowed or repaid on hundi.

specifies certain transactions mentioned above under the lens of "undisclosed income" rebuttable by strict proof of evidence to the contrary.

Particular areas where an assesse is put to strict proof. Courts have looked at the application of the Section from a triple angle of 1) identity of the persons involved; 2) credit worthiness and 3) genuineness of the transaction. Also in Penalty/Prosecution/Search matters the quality of evidence has come up for a close scrutiny as harsh consequence follow for an adverse finding.

1. **Test of "genuineness":**

   I will first take up the issue of "genuineness", probability – human nature angle. The recently reported decision in ***CIT vs. M S Aggarwal (2018) 406 ITR 609 (Delhi)*** brings out the test of genuineness. This was a search case and an addition of Rs.61.80 lakhs had been made in the block assessment order. Two questions were raised- 1) whether or not the gifts were genuine or just accommodation entries and 2) the addition can be made u/s 158BM if the addition is not relatable to any material fund at time of search. The High Court answered against the assesse on the first issue of genuineness holding that the transaction is not genuine. But, on the second issue referred the matter to a larger bench as there was cleavage of opinion.

   The reason for holding that gifts were not genuine although ITAT had decided in favour of the assesseee - the ITAT deleted the addition on the ground that the issue was outside the scope of a block assessment. The ITAT on genuineness held at page 625/626 that the assesse had placed massive evidence which was not rebated by the Department and held that gift to be genuine. The HC took a contrary view-

   "Without prejudice to our finding that the issue of genuineness of gifts lies outside the purview of block assessment as envisaged under Chapter XIV-B, we proceed to consider this aspect of the controversy also. The sheet anchor of Department case is the admission made by the assessee that the gifts are non-genuine and have been arranged through a Chartered Accountant on payment of commission@ 3% Ld. Counsel was at pains in emphasising that the statement has been procured by the assessee under coercion and pressure and is contrary to CBDT's instruction issued in march, 2003 pursuant to Kelkar Committee Report wherein the Committee has acknowledged the prevalence of the practice amongst the search parties to obtain forced confessions of undisclosed income from the assessees. The proposition is well established that admission made by an assessee during search operations constitute substantive evidence in view of sections 17 and 21 of the Evidence Act. However, such admission cannot be considered as conclusive evidence against the assessee. It has been held by the Apex Court in Pullangode Rubber Produce Co. Vs. State of Kerala 91 ITR 18, relied upon by the Id. counsel, – an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is correct."

"On the aspect of genuineness of the gift, we would observe that the Tribunal has missed the core issue and question that had arisen for consideration and required an answer. There was no dispute and challenge that the purported gifts were made through bank transactions and donor and his financial status was known. The issue was whether the gifts were arranged and bogus, in the sense that the respondent/assessee had paid cash to procure the gifts from an unrelated person with whom he had no personal relations, love and affection as was admitted by the respondent/assessee in his two statements, before taking a 'u-turn' after two years in 2002. This core issue has been overlooked and ignored by the Tribunal to hold that the gift was genuine."

"……"

"When genuineness of the transaction was examined, the assessee must justify the cash credit by explaining the nature and reason of the transaction, otherwise Section 68 of the Act could be invoked even when there was evidence that the money was received by cheque or though bank transaction. This would not ipso facto determine and decide whether the transaction was genuine and truly a gift."

"It was emphasised that to examine the genuineness of a gift, the test of human probability was very appropriate. It was reiterated that a gift cannot be accepted as such to be genuine merely because the amount has come by way of cheque or draft through banking channels unless the identity of the donor, his creditworthiness, relationship with the donee and the occasion was proved. Unless the recipient proved the genuineness of the transaction, the same could be very well treated as an accommodation entry of the assessee's own money, which was not disclosed for the purpose of taxation."

2. **Confession and later retraction (in particular 'Search'):**

The HC in that decision also discussed the issue of confession at the early stage that the transaction was not genuine but retraction later on. On this issue the Courts stated-

"It is in this context that the statements on oath made by the respondent- assessee on two occasions, i.e. 25th November, 1999 and 6th January, 2000 become relevant and significant. Section 114 of the Evidence Act states that Courts may presume existence of certain facts having regard to common course of natural events, human conduct and public and private business in relation to facts of a particular case."

"Judicial notice of pernicious practice of procuring gifts could also be taken. However, it would be incorrect to apply presumption under Section 114 of the Evidence Act or the facts that could be judicially noticed, as affirmative or negative universal principles cast in stone. The factual background, i.e. facts and circumstances, matter and would be compelling.

"32. Confessions are important for when voluntarily made there is a presumption that no person would make a statement against his interest unless it is true. Therefore, courts have to be cautious and careful that the confession recorded was voluntarily and not obtained under coercion and by force and wrongful inducement. Force and coercion are not synonymous and cannot be mixed and equated with mere anxiety and stress due to search and seizure operations, or inducement propelled by remorse and atonement to make an admission and confess a wrong. Motive of the person making the admission to gain indulgence, advantage or avoid evil of a temporal nature, cannot be treated as equivalent to inducement, coercion or fraud. Whether a confession is voluntary or induced by force, threat, coercion and wrongful inducement would primarily be one of fact, albeit any judicial verdict and decision on the issue must take all relevant facts and circumstances of the case into consideration and should not be guided by mere pre-ordained impressions. Factors like time of retraction, nature and manner of retraction etc. are relevant. Mere retraction does not make or proves that the admission was obtained by inducement, threat etc. Further, prudence requires that the court would examine the truthfulness and correctness of the admission when admissions are accepted and relied. Corroboration by attending circumstances may be justified. [See K.T.M.S. Mohd. and Another versus Union of India, (1992) 3 SCC 178, Telstar Travels Private Limited and Others Vs. Enforcement Directorate, (2013) 9 SCC 549, Adambhai Sulemanbhai Ajmeri and Others versus State of Gujarat, (2014) 7 SCC 716 and Seeni Nainar Mohammed versus State, (2017) 13 SCC 685)]."

3. **Type of Evidence:**

a. **Oral evidence (Cross Examination):**

Sections 59 & 60 of the Indian Evidence Act, 1872 deals with the evidence which is confined to words spoken by mouth. This Evidence, if worthy of credit, is sufficient without documentary evidence to prove a fact or title.

This evidence should be approached with caution. The court must shift the evidence, separate the grain from the chaff and accept what it finds to be true and reject the rest. The modes of proof are:

i. Direct Evidence

ii. Indirect Evidence

b. **Documentary Evidence:** Sections 61-90 of the Indian Evidence Act, 1872 deals with the evidence where any matter expressed or described upon any substance by means of letters, figures or marks by more than one of those means intended to be used or which may be used for the purpose of recording the matter.

- **The modes of proof of contents of documents are:**

a. **Primary Evidence:** Primary Evidence consists of the original document, which is presented to the court for inspection. This evidence is the best evidence in all circumstances. The general rule talks about giving primary evidence. No procedure of notice is required before giving evidence. Its importance is highest.

i. Rule of Best Evidence:

The Rule specifies that the best evidence existing in a particular case and available, according to what the circumstances would allow or the party will be able to produce, ought to be produced. The best or original evidence means primary evidence.

b. **Secondary Evidence:** Secondary Evidence consists of the document which is not an original document. Though it is not best evidence but is evidence of secondary nature and is admitted in exceptional circumstance. It is an exception to the general rule.

4. **Presumption u/s 132(5) of the Income tax Act, 1961:**

At the outset, it must be clarified that if a procedure is prescribed under the Income-tax Act, the same is required to be followed. It is only in the absence of a particular procedure which is required to be followed that the Income Tax Authorities have to fall back upon and rely upon other allied laws. There are certain provisions in the Income-tax Act where a specific reference is mentioned about the Evidence Act, CPC and Criminal Procedure Code ("Cr.P.C.").

Presumption is only applicable in Search cases and not in assessments.

- **Rule of Presumption and its definitions:**

Section 132(4A) lays down a rule of "presumption". It is presumed that whatever is found during the search, the ownership is that of the "occupant".

This rule of presumption is intended with the sole purpose that the raiding party would seize the assets where there is no proper explanation forthcoming.

This does not mean that what is good at the time of search would also be through for the purposes of assessment. Assessment proceedings are different from action and enquiry at the time of search. In an assessment proceedings, necessary enquiry is required to be made. The presumption raised in Section 132(4A) would be an important piece of evidence, but that ipso facto would not justify an addition in the assessment without reference to a proper enquiry as to the nature of the transaction. Thus, in an assessment proceeding, it is essential that the presumption is rebuttable and fresh light could be thrown on the same.

Thus, the proposition which emerges is that presumption is total and absolute so far as Section 132(4A) r.w. Section 132(5) is concerned, but so far as assessment proceedings are concerned, it is only a "rebuttable presumption".

On a conjoint reading of sub-section (4) and sub-section 4A) of Section 132, it appears that the restriction as to presumption is not restricted only to action connected with search and seizure, but the same may have application to other provisions of the Act.

Thus a proposition which could be agitated is that the presumptive value is total so far as Section 132(5) is concerned, but for other proceedings it has a persuasive value and the same is a rebuttable presumption.

Section 132(4A) was introduced by the Taxation Laws (Amendment) Act, 1975, w.e.f 1-10-1975. It raises a presumption in respect of the contents of books of account and other documents. This presumption is linked with what is found at the time of search and seizure.

Sections 132A and 132B provides an integrated scheme laying down the procedure for search and seizure along with the powers of confiscation of assets. Thus, it could be argued that the presumption must be held to be applicable only in relation to adjudication as per Section 132(5).

Addition on the basis of loose papers/diary/rough notes not sustainable as held in number of judicial decisions.

To be continued...

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Input Service Distributor (ISD) Vs. Cross Charge in GST

CA Madhukar N Hiregange & CA Mahadev R

Though it has been more than a year since inception of GST in India, there are still issues which need clarity. One such issue is understanding and compliance of input service distribution/ cross charge to own units. Till today there is no clarification issued by the government in this regard and there are divergent views on this. In this article, we have analysed these aspects including possible solution to ensure compliance with law and avoid disputes in future.

Concept of ISD

Input service distributor or ISD [Section 2(61) of CGST Act 2017] can be understood as an **office** of the supplier of goods or services or both. This office receives tax invoices issued under section 31 towards the receipt of input services and ***issues*** a prescribed document for the purposes of distributing the credit of Central tax, State tax, Integrated tax or Union territory tax paid on the said services. Such document is issued to the receiver of taxable goods or services or both having the same PAN as that of the said office. This concept is mainly to ensure that the actual user unit ONLY claims the credit for bills addressed to office of the receiver.

In terms of section 20(1) of CGST Act 2017, ISD ***shall*** distribute the credit of Central tax as Central tax or Integrated tax and Integrated tax as integrated tax or central tax by issuing a document. Similar provisions exist in state GST laws as well. There are few conditions as to the distribution including one as to distribution based on the ratio of turnover of all the units to which the expense pertains. Ex: Head office of ABC Ltd in Bangalore receives the tax invoice for the statutory audit done including the branches in Tamilnadu and Kerala. The ratio of turnover for these two branches is 60% and 25%. Balance 15% being the share of Bangalore. In this case, the credit on statutory audit invoice to be distributed in the ratio of 60:25:15. It is important to note that the distribution of credit is only on the input services and not on inputs or capital goods.

Based on the definition of ISD based on Section 2(61), it could be argued that the ISD is office which ***issues*** prescribed document. If it is not issued, then it need not be treated as ISD which is optional. The counter argument could be based on Section 20(1) which states that ISD ***shall*** distribute which could make it mandatory to distribute credits. There is no concrete answer for this as of now. Authors recommend that as it is a benefit, it is advisable to get registered as an ISD.

Concept of cross charge

Supply of goods or services or both which are made in course of business between related persons or between distinct persons as specified in Section 25 would be treated as supply even though there is no consideration. This is in terms of Section 7 read with Schedule I to CGST Act 2017. In simple words, any supply made to own branches or units for which separate GST registration has been obtained within the State or outside the State would be liable for GST.

There could be many support services provided from head office or regional office to other locations or vice versa. It is important to identify such services and discharge GST at the applicable rates as they are deemed to be supplies even without consideration. Recent advance ruling of Karnataka authorities in case of Columbia Asia Hospitals Private Limited would be important for reference here. In this case, it has been held that the services of employees working at corporate office to provide accounting, administration and IT systems to other branches of the same company would be supply liable for GST. The ruling has its own limitation as treating employee of the company as employee of particular branch or location is not in the opinion of the paper writers incorrect in law. Even legal provisions of Employees Compensation Act or Minimum Wages Act does not expect such treatment.

Conflict between ISD and Cross charge

The main issue bothering the tax payers is opting between ISD and cross charge. There are many tax payers who have not complied with ISD concept on the common expenditures incurred with tax invoices. Adding to this,

ISD registration woes were also there in the beginning. The credit distribution has to be done in the same month and invoices should be addressed to ISD registration to enable distribution of credits. Many would have got the invoices addressed to regular registration due to ignorance. To address this issue, Rule 54(1A) of CGST Rules 2017 was inserted providing option for the registered person to raise internal invoice from regular registration to ISD registration and then pass on the credits.

Those who have not obtained the ISD registration at all to distribute the credits could have disputes as it would result in excess credit claim. There the only option would be to cross charge to other locations. Being related party supplies, the value declared in the invoice could be considered as open market value when the recipient unit is able to take full credit. However, in case of common expenses such valuation may not be accepted. Department could contend that credits were required to be distributed under ISD mechanism and by cross charging there is excess / short distribution of credits. Therefore, tax payers need to be careful on opting for cross charge towards common credits for the past. While valuing the cross charges, the turnover ratio could be considered so that it could be proved that there is no excess/ short claim of credit.

Possible solution

In case of common expenses, it is suggested to obtain the ISD registration and distribute the credits to the respective locations. The vendors alternatively, could be instructed to issue separate invoices to respective locations instead of consolidated invoices which could reduce the ISD compliance. In case of support services provided from one location to another location, cross charging can be opted with valuation options provided in Rule 28 of CGST Rules 2017. When the recipient unit is eligible for full credit, then there would not be major implication on valuation as value of invoice would be treated as open market value. In case the recipient unit is not eligible for full credit, then cost of support + 10% could be considered for issuing tax invoice on the units.

Conclusion

The concept of ISD being new to many tax payers such as traders, small units etc., non-compliances are bound to be expected. Professionals could understand the scenario and provide best solution to them considering the practical challenges, additional compliances involved. Cross charging could be missed by many which could have implication in future with additional cost such as penalty, interest and denial of credit as well. Professionals could guide in compliance which could also be part of GST certification which is due on 31st December 2018.

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OBITUARY

We deeply regret to inform
sad demise of our Past President

CA M.S. Ranganath
passed away on
3rd October 2018.

May his soul rest in peace.

Practical Intricacies in Tax Refund Procedure under GST Law

CA Annapurna Kabra

Under the erstwhile taxation regime the refund was onerous area for the tax applicant and the tax administrators. When GST was implemented it was expected that there will be effective and efficient mechanism put in place for issuing the refunds. The Government has assured the hassle free refund process on the primer of the GST law in the country.

But even after more than a year of GST implementation, the process of obtaining refund appears to be herculean task and there are delays in issuing the refund due to which many exporters are facing working capital crunch…..

In the initial period the tax payers were not able to apply for refund as there were technical issues in the GST portal. Later multiple circulars were issued to allow for manual filing and processing of refunds as a stop gap arrangement by inserting Rule 97A of CGST Rules 2017. The Author discusses certain practical intricacies in claiming the Refund by the applicant under the GST law.

I) <u>Duty Drawback</u>

- The Refund of unutilized input tax credit shall be available to a taxpayer in cases where the taxpayer is engaged in Zero rated supplies made without payment of Tax (Export with LUT).
- No Refund of Input Tax Credit shall be allowed if the supplier of goods or services or both avails of drawback in respect of Central Tax or claims refund of the integrated tax paid on such supplies.
- It is clarified in the circular 37/11/2018 GST dated 15/3/2018 that the restriction on drawback is for CGST, IGST and Cess and not for Basic Customs Duty. Therefore, a supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of central tax / State tax / Union territory tax / integrated tax / compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax. Additionally, the exporter will be entitled to claim SGST refund even if he claims drawback of Central taxes.
- However, for the period July 2017 to September 2017, the duty drawback was being allowed even on the GST portion and hence for the said three months, exporters who have filed export shipping bills with claim for duty drawback are not entitled to claim refund of Accumulated credits.

II) <u>Cumulative filing of Refund claim activated in Common Portal.</u>

- There is a clarification issued in 37/2018 in point 11 that in many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed.
- Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period. In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters.
- The calendar month(s) / quarter(s) for which refund claim has been filed cannot spread across different financial years. Therefore the applicant has to cumulatively file in the respective year for claiming the refund.
- If the above issue was not resolved, the exporter was forced to work on a rebate mode to extinguish/utilize the ITC accumulated through months in which he does not have exports.

III) <u>Letter of Undertaking</u>

The Exports of Goods or Services without payment of IGST by furnishing of letter of Undertaking (LUT) is eligible as exports, even though the exports are

made before filing the Letter of Undertaking. If Letter of Undertaking in applied for later point of time, the benefit of zero rating cannot be denied.

Thereafter the exports made before furnishing LUT is also an Export and treated as Zero Rated Supplies. It is not very clear the time line/due date within which post facto application for LUT should be made as lot of exporters who have exported without payment of tax by not obtaining LUT. There are lots of case laws under excise laws which provide that if exports are complete then LUT is only procedural and hence no liability can be fastened on the tax payer. LUT is undertaking for payment of tax if exports are made

IV) Export Invoices Vs Shipping Bill

a. **Shipping bills raised in subsequent months**

As per Rule 89(4) of CGST Rules 2017, defines the Turnover of Zero Rated supply of goods means the Value of Zero Rated Supply of goods made during the relevant period without payment of tax under bond or letter of Undertaking. Relevant Period means the period for which the claim has been filed. Based on the above analysis of the 'Turnover' and 'Relevant Period' the applicant can include the export invoices of the respective months even though shipping bills are raised in the subsequent months.

b. **In case of variance between GST Invoice and Shipping Bill:**

It is also instructed to the officers for processing of refund considering lower of the value declared in GST Invoice and the value declared in the corresponding bill/Bill of Export.

V) Submission of Invoices- Relaxations

The refund claim should be accompanied by a print out of Form GSTR-2A of the applicant for the relevant period for which the refund is claimed. In some situation the Form GSTR-2A may not contain details of Invoices then in such scenario the proper officer may call for the hard copies of Invoices if it is necessary for examination of the claim of refund. It will reduce the paper cost and huge filing of Invoices for claim of refund. In effect, the above clarification enables us to understand that matching of credits availed with the details appearing in the auto populated GSTR-2A is not warranted. Even if some of the suppliers have not uploaded the tax invoices, the exporter is still eligible to claim such credits and avail the facility of refund, if all other conditions for claiming ITC is fulfilled (Eg: valid tax invoice)

VI) Refund on Account of Inverted duty structure,

The formula prescribed for claiming Refund under GST for Inverted Duty structure is Maximum Refund Amount = {(**Turnover of Inverted Rated supply of goods**) x Net Input Tax Credit ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods. While the Act restricted refund only on inputs (for no reason), rules allowed for refund even on input services. This discrepancy was sought to be amended retrospectively but the same has been challenged in the Rajasthan High Court in the case of Shree Rama Newsprint Limited and the High Court has allowed a interim stay for such retrospective amendment

VII) Refund in case of Export of Services

While calculating refund of unutilized input tax credit on export of services without payment of Integrated tax, the adjusted total turnover should be the total turnover in the state or union territory as defined under clause 112 of section 2, excluding the turnover of services and the turnover of zero rated supply of services determined in terms of 'Turnover of zero rated supply of services' and non zero rated supply of services excluding exempted supplies and turnover of supplies in respect of which refund is claimed under sub rules 4-A or 4-B or both, during the relevant period. Earlier there was a drafting error in the formula prescribed for computation of refund claims for services. This error has been amended to the effect that refund claims for services will now be computed on export realization basis instead of invoice date.

VIII) Payment through DRC-03

If the refund application is rejected on account of ineligibility of the credit or under any other provisions of the Act and rules, the same is re-credited to the electronic credit ledger in **FORM GST RFD – 01B**. In case of refund rejection order is passed against which the applicant files the appeal then in such instance the appellant can make payment of 10%/20% of disputed tax through FORM GST DRC – 03 (Voluntary Payment) or In case of recovery of the rejected amount in case where the appellant has not filed the appeal then the

demand order shall be issued and same will be added to the electronic liability register, the applicant can pay the amount of liability on voluntarily in FORM GST DRC – 03.

IX) Disbursal of refund amount by the disbursing Authority

If the sanctioning authority sanctioned the provisional amount of refund incorrectly for ineligible input tax credit, then the remedy lies in filing an appeal against such order and not in withholding of sanctioned amount. The State and Central tax authorities shall not refuse to disburse the sanctioned amount except under 54(11) of the CGST Act, 2017. However the refund disbursing authority has the power to make adjustments of the refund amount against any outstanding demand.

X) Deficiency Memo

Once the deficiency memo in FORM GST RFD-03 is issued for any deficiencies in the application for refund application, the amount will get re-credited to the credit ledger. The applicant has to file a new application after rectification of the deficiencies. In this case the department is issuing show cause notice to the applicant where the refund application is not resubmitted after issuance of the deficiency memo. It is clarified that the show cause notice is not required to be issued where the deficiency memo has been issued.

XI) Pre- Compliances for Refund Application:

Refund claim can be filed only after the GSTR 1 for the month for which refund is being claimed and GSTR 3B for the month preceding the month for which refund is being claimed, have been filed. The shipping Bill filed for export of goods along with export manifest / report will be deemed to be application for filing refund claim.

XII) ITC on Capital goods

While exporting of goods or services with payment of IGST/CGST the input tax credit on capital goods can be claimed whereas if the goods or services are exported without payment of IGST then refund is restricted only to the extent of inputs and input services. Refund of ITC on Capital goods is not allowed in this scenario.

XIII) Deemed Export/Merchant Export should be removed

In case of supplies to SEZ unit or a SEZ developer, the application for refund shall be filed by the supplier of goods or supplier of services. In case of supplies regarded as deemed export the application may be filed by the recipient of deemed export or the supplier of deemed export. If the applicant is claiming the refund of taxes paid on deemed exports, the turnover of deemed exports should not be include while calculating the refund amount under zero rated supplies and inverted supplies.

XIV) Incorrect payment of Taxes

The applicant can claim refund of any tax and interest or any other amount before the expiry of two years from the relevant date. The applicant can claim refund of any balance in Electronic Cash ledger by filing the Return under the GST law. The applicant can apply for Refund of excess balance in Electronic cash ledger of wrong payment of IGST in lieu of CGST/SGST or vice versa. Even the incorrect/wrong payment of taxes can be applied by the applicant through the above procedure.

XV) Refund of Wrong collection of Taxes

In case the liability is over reported, as per circular 26/2017 the applicant can adjust the amount of taxes paid in subsequent monthly return and the applicant cannot claim the refund of same. For example, the applicant has collected 18% in lieu of 5% and still the amount is not received from the recipient and such taxes are offered to the Government then in such instance such excess tax payment can be adjusted in subsequent months.

XVI) Rejection of Refund for following Trifling grounds

- **Full particulars of Valid Tax Invoice**

As per Rule 36(2) of CGST Rules 2017 Input Tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of chapter VI are contained in the said document and the relevant information as contained in the said document is furnished in Form GSTR-2 by such person. Provided that if the said document does not contain all the specified particulars but contain the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and the recipient and place of supply in case of interstate supply, input tax credit may be availed by such registered person. Therefore the input tax credit invoices need not contain full particulars of a tax invoice

as per Rule 36(2) for availing the input tax credit, but during filing the claim of Refund from the department the Deficiency Memo or Show Cause Notice is issued stating that full particulars of valid Tax Invoice is not available on the Input Tax credit Invoices.

Description of Goods in Invoice

Even though the Act is very clear that capital goods means goods capitalized in the books of accounts. The Refund Authority is disallowing or issuing deficiency memo on basis of description in the invoice. It is preferable if they ask for details of goods capitalized in the books and ensure the same are not claimed as refund instead of ad-hoc rejection of the refund application.

Chartered Accountant Certificate

The Refund Authority is insisting for the CA Certificate for processing of Refund in all the instances. Whereas as per Rule 89(2)(m) of the CGST Rules 2017, A certificate in Annexure 2 of Form GST RFD-01 issued by a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person in a case where the amount of refund claimed exceeds two lakhs. The declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause(f) of sub section (8) of section 54. Therefore the Refund should not be rejected for the above reasons.

The above are only certain practical instances which were confronted during applying Refund from the Refund Authority. The Processing of timely GST Refunds will release blocked working capital and facilitate trade to the registered persons. Therefore the Refund Authority should not hold the refund because of non-technical or minor procedural lapses and should release the refund hastily.

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Analysis of the GST Amendment Act, 2018 – PART- II

CA Raghavendra C R & CA Bhanu Murthy J S

1. **Registration [Section 22- 29]**

1.1. Explanation defining 'special category states' is amended so as to exclude States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand from the ambit of special category states apart from state of Jammu & Kashmir.

1.2. Further, new proviso in Section 22(1) is inserted to empower the Central Government, on the recommendation of the Council, to enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, for the special category states.

1.3. Compulsory registration for Electronic Commerce Operator in terms of Section 24(x) is restricted to the E-Commerce operator who is required to collect tax at source under section 52. Therefore, those E-Commerce operators who are not notified as required to collect tax in terms of section 52 would not be required to compulsorily get registered.

1.4. SEZ unit or developer of SEZ shall be required to obtain separate registration. Such unit / developer is considered as a distinct from his place of business outside the SEZ.

1.5. Consequent to omission of phrase 'business vertical', section 25 is amended to provide that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

1.6. Provisions of section 29 relating to cancellation of registration is being amended to provide for suspension of registration during the process of cancellation.

2. **Debit notes and Credit Notes [Section 34]**:

Provisions of Section 34 relating to Credit and debit notes, amended so as to allow registered persons to issue consolidated credit or debit notes (as the case may be) in respect of multiple invoices issued in a Financial Year.

3. **Accounts and other records [Section 35]**

3.1. Section 35(5) provides that every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a Chartered Accountant or a Cost Accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 such other documents in such form and manner as may be prescribed.

3.2. In terms of the amendment, the said requirement of audit by a CA etc., is not applicable to any Department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

3.3. In summary, such Government Departments and Authorities referred to above, need not get their accounts audited by the Chartered Accountant or a Cost Accountant and also are not required to furnish reconciliation statement etc.

4. **Furnishing of returns [Section 39 & 43A]**

4.1. Section 39 is amended to empower the Central Government to make rules to fix time limit within which the returns shall be filed and also to notify certain category of assesses who could file the returns on quarterly basis.

4.2. Further, Central Government is empowered to notify certain classes of registered persons who shall pay the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.

4.3. The above amendments are to allow quarterly filing of returns for the assesses who has turnover of less than Rs. 5 crores.

4.4. Presently, the rectification of any errors is required to be made in the return for the month in which such error

was noticed. The provisions are amended to empower central government to prescribe the procedure to rectify the errors and also allow such rectification to be made within the end of financial year for which such details pertain or the actual date of furnishing of relevant annual return, whichever is earlier

4.5. Section 43A has been inserted to prescribe simplified return filing system and availing input tax credit.

5. **GST Practitioners[Section 48]**

5.1. Provisions relating to GST practitioners is amended to increase the scope of the work that could be performed by GST practitioners.

6. **Payment of tax etc.[Section 49, 49A and 49B]**

6.1. The provisions are amended to provide for payment of tax by way of utilising the input credit is subject to the provisions section 41 and new provisions under section 43A.

6.2. Further, the provisions relating to manner of utilization of credit of Integrated tax/ Central Tax / State Tax has been amended as under:

(a) Mechanism for utlization of credit has been provided to specify that credits of the above shall be utilised first towards payment of respective taxes, and if any balance remains unutilized, the same shall be used for payment of other allowed taxes. For e.g., initially the credit of IGST shall be completely utilized and afterwards CGST and SGST should be utilized against outward tax liability.

6.3. In terms of Section 49B, the Central Government is empowered to prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

7. **Refunds: [Section 54 of CGST Act and Section 2(6) of IGST Act]**

7.1. Principles of unjust enrichment were earlier not made applicable to refund of accumulated credit on account of Zero rated supplies, which includes exports and SEZ supplies. However, with the amendment, the said exclusion would be only to refund on account of exports and therefore, refund on account of SEZ supplies would have to satisfy the principles of unjust enrichment.

7.2. Receipt of consideration in INR, wherever permitted by the Reserve Bank of India, is also considered as receipt in foreign exchange for the purpose of export definition. Further such receipt is also recognized in the definition of relevant date.

7.3. Monthly refund facility to the taxable person having inverted tax structure.

8. **Recovery of Taxes [Section 79]**: For the purpose of recovery, person includes distinct person.

9. **Pre-deposit for filing appeal [Section 107(6)(b) and Section 112(8)(b)]**

9.1. Upper limit of pre-deposit for filing appeal before the Commissioner (Appeals) is fixed at Rs. 25 crore.

9.2. Similarly, Rs. 50 crore would be the upper limit for appeals before the Tribunal.

9.3. Similar amendments are made in IGST Act, 2017 which fixes the upper limit of pre-deposit at Rs. 50 crore and 100 crores for filing appeal before Commissioner (appeals) and the Tribunal respectively.

10. **Detention [Section 129]**: For the purpose of payment of tax along with interest and penalty for release of detained goods, the time limit has been extended from 7 days to 14 days.

11. **Transitional provisions [Section 140] - retrospective from 1.7.2017:** Section 140 has been amended retrospectively so as to restrict transition of credit of cesses (education cess, Krishi kalyan cess etc.,) into GST scheme.

12. **Job work [Section 143]:** Where inputs or capital goods area sent for job work, the processed goods shall have to be returned within 1 year from the date on which it was sent and the capital goods shall have to come back within 3 years. Through this amendment, Commissioner could extend the time period within which the processed goods/ capital goods have to be returned from job worker for a further period of 1 year or 3 years.

13. **Amendment to place of supply provisions [Section 12 & 13 of IGST Act]**

13.1. Place of supply of transportation of goods shall be the destination of such goods even though the supplier and recipient of services are located in India. (proviso to Section 12(8))

13.2. Place of supply for goods imported into India temporarily for the purpose of treatment would not get covered under section 13(3). In other words, the place of supply shall be location of the recipient of supply.

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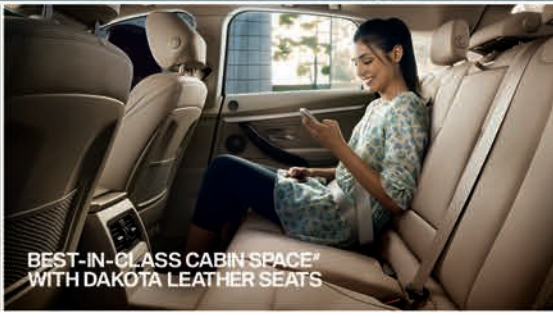
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Principles of Natural Justice

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In the previous edition, I had written about the self-imposed limitations on the powers of the High Courts under Article 226 of the Constitution and that the High Courts would generally decline to exercise their extraordinary writ jurisdiction unless there has, inter alia, been a violation of the principles of natural justice. This article briefly delves into what constitutes these principles and why they are considered to be one of the most sacred rights protected under the Constitution.

The principles of natural justice are almost as old as human civilization itself. The term "natural justice" has often been used interchangeably with the term "natural law." However, the principles of natural justice are merely a part of the larger natural law that has evolved over various civilizations. The expression "natural law" or *jus naturale* denotes a system of rules and principles that guide human conduct, independent of enacted or written law. See Black's Law Dictionary. The Hon'ble Supreme Court, in Union of India v. Tulisram Patel, (1985) 3 SCC 398, succinctly traced the history and evolution of natural law by explaining that man often found the written and codified law to be one-sided and heavily tilted in favour of the rich and powerful. Such laws led to arbitrariness and unfairness. It was in this background that "natural law" evolved, as explained in Tulsiram Patel as follows:

> *"If there was any help to be found or any hope to be discovered, it was only in a law based on justice and reason which transcended the laws and customs of men, a law made by someone greater and mightier than those men who made these laws and established these customs. Such a person could only be a divine being and such a law could only be "natural law" or "the law of nature" meaning thereby "certain rules of conduct supposed to be so just that they are binding upon all mankind."* (Emphasis supplied).

Therefore, natural law is that law that pervades all civilized societies, and is in addition to the written and codified law. It contains certain basic human values that have evolved over a period of time and are considered so sacred that they must be adhered to irrespective of what the codified law may be. Blackstone, in his famous treatise, "Commentaries on the Laws of England," observed that:

> *"This law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original."*(Emphasis supplied).

The principles of natural justice, as we understand them today, owe their genesis to the abovementioned "natural law" or *jus naturale*, and over the years, by a process of judicial interpretation, certain cardinal rules have been evolved as representing the principles of natural justice. As observed in Tulisram Patel, "they constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men."

The Hon'ble Supreme Court, in a number of judgments, has elevated the principles of natural justice to a fundamental right guaranteed under Article 14 of the Constitution. After a detailed analysis of the case law on the point, the Supreme Court, in Tulsiram Patel, held as under:

> *"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14* because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of state action, it is a violation of *Article 14:* therefore, a violation of a principle of natural justice by a State action is a violation of *Article 14. Article 14, however, is not the sole repository of the principles of natural justice.*

What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially."

As succinctly observed in the passage quoted above, the violation of a principle of natural justice by a state action results in arbitrariness, which amounts to discrimination, thereby violating the right guaranteed under Article 14 of the Constitution. Thus, the principles of natural justice stand enshrined as a fundamental right and, accordingly, if there is any breach of a person's right to natural justice, he may seek redressal of his grievances by filing a writ petition challenging the actions before the High Court or even the Supreme Court.

It would now be relevant to discuss what exactly are recognized as the principles of natural justice. The first rule of natural justice is represented by the maxim, "*nemo debet esse judex in propria causa*," which literally translates to, "no man shall be a judge in his own cause." The reasoning behind this rule is fairly obvious – a man that judges his own case is believed to be biased and, therefore, potentially unfair. Accordingly, no party ought to be affected by any actions at the hands of a person who is so interested in the case that he is, in effect, judging his own cause. It is important to remember that there need not be actual bias shown, but the mere fact that there is potential for bias is sufficient to constitute a violation of the principles of natural justice.

The second cardinal principle of natural justice is "*audi alteram partem*," which translates to, "hear the other side." This principle contains the idea that no order shall be passed without hearing the party/parties likely to be affected by the order. Here again, the reasoning behind the principle is simple – a person against whom an order is being passed should, at the very least, have an opportunity to put forward his side of the case and the adjudicating authority/judge must, only after duly considering his case, decide the issue(s).

It is important to remember that inherent in both the principles of natural justice is the concept that justice must not only be done but also be seen to be done. Therefore, it is critical that the principles be adhered to strictly and to the maximum extent possible, failing which the actions are susceptible to challenge as being violative of the principles of natural justice.

It is pertinent to note at this stage that the Supreme Court, in Rama Varma Bharatan Thampuram v. State of Kerala, (1979) 4 SCC 782, had held that natural justice requires reasons to be recorded in support of any order passed by a quasi-judicial authority. Therefore, the Supreme Court added a third principle of natural justice, namely that orders need to speak for themselves by recording reasons for the conclusions made therein. More recently, in Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496, summarized the law on the requirement of speaking orders by observing that, "reasons have virtually become as indispensable as a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies." The Court further went on observe that the requirement of passing speaking orders "emanates from the broad principle of fairness in decision-making" and "is now virtually a component of human rights." See Kranti Associates. In sum, it would be safe to state that the requirement of passing reasoned orders is accepted as one of the principles of natural justice.

The Supreme Court, in a number of judgments, has, however, cautioned that the principles of natural justice cannot be put in a straightjacket formula and should not be applied by the Courts in a vacuum without reference to the facts of each case. In Municipal Committee, Hoshiarpur v. Punjab State Electricity Board, (2010) 13 SCC 216, the Supreme Court observed that where a person complains of violation of the principles of natural justice, "the court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of the peculiar case." The Court further observed that "there may be cases where in admitted and undisputed facts, only one conclusion is possible [and] in such an eventuality, the application of the principles of natural justice would be a futile exercise and empty formality." In this regard, reference may also be had to State of U.P. v. Om Prakash Gupta, (1969) 3 SCC 775, and U.P. Junior Doctors' Action Committee v. Dr. B. Sheetal Nandwani, (1990) 4 SCC 633.

On the other hand, in Municipal Committee, Hoshiarpur, the Supreme Court went on to observe that, "there may be

cases where the non-observance of natural justice is itself prejudice to a person and proof of prejudice is not required at all." Similarly, in A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, the Supreme Court observed as follows:

> *"The non-observance of natural justice is itself prejudice to a man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."*

Thus, as stated above, the Supreme Court has made it clear that the rules of natural justice cannot be simplistically straightjacketed. What needs to be discerned in the facts of each case is the prejudice, or even the possibility of prejudice, that may have been caused on account of non-adherence to the principles of natural justice. In short, "to sustain a complaint of non-compliance with the principles of natural justice, one must establish that he has been prejudiced thereby for non-compliance with the principles of natural justice." See Board of Directors, H.P. Transport Corporation v. K.C. Rahi, (2008) 11 SCC 502.

Another exception to the rules of natural justice is in cases where a statute excludes strict adherence to the principles. As held in Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458:

> *"It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred / and the effect of the exercise of that power."*

Therefore, in sum, although the principles of natural justice are "considered to be so fundamental as to be implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function," there are certain cases where strict adherence to the principles can be done away with. See Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664. In short, the principles cannot be straightjacketed and their application will always vary from case to case. Nevertheless, these principles inhere rights that are so fundamental in nature that they can be said to essential to the functioning of any civilized democracy.

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Financial Reporting and Assurance

CA Vinayak Pai V

1. Heads Up – Latest/Upcoming Changes

AS (Accounting Standards)	
1	**AS 38 – *Intangible Assets*** – Exposure Draft issued that would replace extant AS 26 – *Intangible Assets*.
2	**AS40 – *Investment Property*** – Exposure Draft issued of a new Standard under AS Accounting Framework (No stand-alone standard at present).
IND-AS (Indian Accounting Standards)	
1	• Companies (Indian Accounting Standards) Second Amendment Rules, 2018 notified by MCA: • **The Amended Standard** o **IND-AS 20** - *Accounting for Government Grants and Disclosure of Government Assistance* • **Consequential Amendments to Other Standards** o **IND-AS 16** – *Property, Plant and Equipment* o **IND-AS 38** – *Intangible Assets* o **IND-AS 12** – *Income Taxes*
IFRS (International Financial Reporting Standards)	
1	Tentative decisions by IFRS Interpretations Committee: a. IFRS 15 – ***Assessment Of Promised Goods*** *Or Services* b. IAS 17 – ***Deposits Relating To Taxes*** *Other Than Income Tax* c. IAS 27 – ***Step Acquisitions****: Investments In Subsidiary That Are Accounted For At Cost*
Assurance	
1	**SA-610 (Revised)**- ***Using The Work Of Internal Auditors***: Implementation Guide issued by ICAI
2	Standard on Assurance Engagement **SAE 3410 – *Assurance Engagements On Greenhouse Gas Statements*** – Draft Exposed by ICAI
3	Technical Guide on ***Audit of Urban Improvement Trusts and Development Authorities*** issued by ICAI
4	ICAI Announcement – **Internal Auditor Of An Entity Cannot Undertake GST Audit Of The Same Entity.**
Company Law – Accounts and Audit Related	
1	MCA Notification – Central Government appoints October 1, 2018 as date of **constitution of National Financial Reporting Authority** (NFRA).
2	Amendment to **Schedule V** – Remuneration of Managerial Personnel.

2. Case Study – Impact of New IND-AS Revenue Recognition Standard

IND-AS 115 – *Revenue From Contracts With Customers* is the new standard under the IND-AS framework for revenue recognition that replaced extant revenue standards IND-AS 11 – *Construction Contracts* and IND-AS 18- *Revenue* with effect from April 1, 2018. The new standard is based on the core principle that an entity recognizes revenue to depict the transfer of promised goods and services to customers in an amount that reflects the consideration to which it expects to be entitled in exchange for those goods or services. IND-AS entities need to apply a 5-Step revenue recognition model for recognizing revenues.

Real estate companies are exposed to significant impact of switching over to the new standard. The **impact is more profound** on the **residential projects portfolio**. This, in reality, is not the impact of IND-AS 115 but the result of the carve-out that was made earlier for this revenue stream which has now been effectively withdrawn. It may be noted that the revenue recognition under IND-AS until the last fiscal was driven by the "*Guidance Note on Accounting for*

Real Estate Transactions (For entities to whom IND-AS is applicable)" issued by the ICAI.

A confusing scenario arises (and has arisen in Q1 results) from the stakeholders point of view considering the fact that incomplete projects at March 31, 2018, **revenue and profits were recognized based on Percentage of Completion (POC) method** in line with previous applicable guidance but the same **needs to reversed** at date of application (of IND-AS 115). The **full contract revenue and profits would once again flow to the Statement of Profit and Loss** in subsequent quarters at the point the customer performance obligations are discharged (point of revenue recognition).

Case Study:

The following case study is based on first quarter results of a real estate company based on financial information available in the public domain.

Impact on topline - revenues	• **Reduction of Rs. 203 crores** in the first quarter of 2018-19
Impact on bottom line - PAT	• **Reduction of Rs. 17 crores** for the first quarter of 2018-19

The key takeaways:

- Significant **impact on residential project revenue** portfolio.
- **Project completion method** for revenue recognition **in contrast with earlier percentage of completion method** for residential units portfolio.
- **Obligations under the customer contract need to be completed to trigger revenue recognition** under IND-AS 115 and projects registered under Real Estate Regulation Act (RERA) need OC (Occupancy Certificate) application: a must requirement for concluding that performance obligation has been discharged.

3. **Penalizing Action taken by the RBI Against Co-operative Banks**

Herein below is provided a list of penalizing actions taken by the RBI (in October 2018 to date) against certain Co-operative banks that may be of academic interest from the audit standpoint.

Date of Action	Penalty against the Co-operative Bank for
Oct 10, 2018	• Violation of RBI instructions/ guidelines on **restriction on holding shares in other co-operative societies**.
Oct 09, 2018	• **Contravention of All Inclusive Directions (AIDs)** issued and non-compliance with **RBI guidelines on classification and reporting of frauds**.
Oct 09, 2018	• For **granting housing loans of more than – 70.00 lakhs per beneficiary** violating directives. • Extending **donation to a Trust where a Director of the bank was an Administrator**.
Oct 05, 2018	• Violation of Reserve Bank of India directives/instructions/guidelines on **Exposure Norms and Statutory/ Other Restrictions - UCBs**
Oct 3, 2018	• Violating RBI directives/guidelines by **sanctioning loans and advances to directors and their relatives**, vehicle loans/staff loans **without documents**, **not reporting cash transactions** of above ₹ 10.00 lakh per month in aggregate to GOI, FIU.

4. **Case Study: IND-AS Transition Impact**

The following case study of an **IND-AS first-time adopter** is based on published financial statements available in public domain.

IND-AS Measure	Impact (%)
Net profit for the comparative period	**Decrease** of **2.0%**
Total Equity at date of transition	Increase of 12.9%
Total **Equity at end of comparative period**	**Increase** of **13.3%**

Key **Contributing Factors** for IND-AS Impact:

- Under AS, the measurement of **interest income and provisioning for loans** given by the financial services business was accounted per **RBI guidelines** whereas

under the new IND-AS accounting framework, the recognition of interest income is on the basis of the **effective interest method (EIR)**. The allowance for expected credit loss for financial assets is based on the **Expected Credit Loss (ECL) model**. In addition, when there is an objective evidence of impairment of a financial asset, the related interest income is recognized on the net carrying amount after netting off the credit allowance provided.

- Under AS, **business combinations** were accounted on Day 1 based on the carrying amounts of assets and liabilities existing in the books of the investee company. Under IND-AS, the assets and liabilities acquired including acquired intangibles are **fair valued** at the date of acquisition.
- **Employee stock option plans** have been accounted using the **fair value method** as opposed to the **intrinsic value method** under previous GAAP.
- Certain **investments** that were **not considered as subsidiaries, joint ventures and associates** under the AS framework have now been treated under IND-AS as subsidiaries, associates or joint ventures.
- The **defined benefit obligations** of **foreign subsidiaries** have been arrived at factoring in the yield on high quality corporate bonds under IND-AS. Under AS, the same was being discounted using yield on government securities.
- Under IND-AS, **deferred tax liabilities** have been recorded on **undistributed profits** of group companies.

5. **Amendment To IND-AS 20 (Applicable From Current Fiscal)**

The MCA vide Notification dated September 20, 2018 has notified amendments to **IND-AS 20 – *Accounting for Government Grants and Disclosure of Government Assistance*** and consequential amendments to three other IND-AS.

It may be noted that the newly inserted Para 48A to IND-AS 20 states that an entity shall **apply** the notified **amendments** for the **annual periods beginning on or after April 1, 2018**. The salient aspects of the amendments are highlighted in the table herein below.

Accounting Topic	The Changes
Accounting for non-monetary grants	• Government grants in the form of non-monetary assets (land or other resources) were required to be accounted under IND-AS (both the grant and the non-monetary asset) at fair value. • The amended IND-AS provides an alternative accounting option - **accounting for both the asset and grant at nominal value**.
Grants related to assets	• The extant version of IND-AS required such grants to be presented in the balance sheet by setting up the same as deferred income. • An alternate option of accounting for such grants has now been permitted whereby the **grant can be deducting carrying amount of the related asset**.
Other amendments	Consequential amendments: a) Accounting for **repayment of government grants related to assets.** **b) No deferred tax asset to be created** for non-taxable government grant (including one accounted based on amendment). **c) Intangible assets acquired free of charge** or for nominal amount by way of government grant can now be **accounted either at fair value or nominal value.** d) The revaluation model can be applied to intangible assets (received by way of government grant) recognized initially at nominal amount.

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Managing Change – Understanding Individual Change

Madhumita Saha

Snippet: How to manage constant institutionalized change by understanding individual change

Setting the Stage for Institutional Change - the Human Element

The world today is defined by exponentially accelerating change. Emerging technologies and associated regulations like the General Data Protection Regulations complicate the fabric of business. In the business world, fast changing regulations, increasing shareholder activism and stiff penalties for non-compliance mandate that all stakeholders adapt to a shifting compliance landscape.

Learning to adapt to continuous change is now necessary for growth and survival.

Implementing any sort of big change requires preparation and the assessment of resources. Both individual and institutional goals have to be clearly outlined to structure the transformation effectively. The capabilities, motivations and mindsets of individuals need to be considered in assigning roles and delegating tasks. People have to be brought on board with what's about to happen and should be able to voice their concerns.

Once the process has started, many may not feel comfortable and several obstacles could arise. Change is disruption, but if planned and managed well, the benefits seriously outweigh the disadvantages.

The Change Curve

For an institution to change, the individuals in the institution must accept the change and adapt to new structures and processes. The Kübler-Ross Change Curve™ is used to understand how people emotionally experience a major disruption. This understanding can help you support personal transitions in the change process. [1]

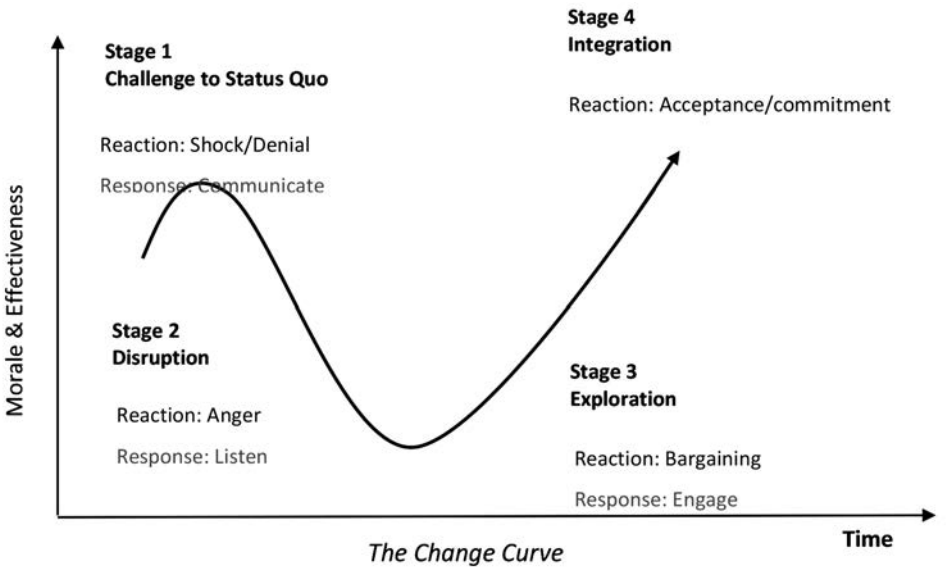
Stage 1 –The Status Quo is Challenged

Normally, people's initial reaction to change is shock and denial. Even if it has been planned well, people need time to understand the nature of the change and how it is going to impact them and the institution. It is important to give clear and timely information. Not everyone will be able to absorb it all at once and they should know where to go if they need help.

Stage 2 – Disruption

Once the change has been put into motion, the real challenges arise as people may start to actively resist it. They may feel angry that their former position and expertise is being challenged, or frustrated about having to learn new skills. Most change involves some kind of loss. For an individual, this may mean a loss of control, loss of their identity and status in the workplace, loss of networks and colleagues, or loss of skills and knowledge (in cases where they become obsolete).

This is the stage where performance dips and problems surface. This is because new behaviors need to be learnt and old ones unlearnt. People need to rely on new networks and



The Change Curve

ways of achieving things. They should feel comfortable with voicing their concerns, and their problems should be actively addressed. Remember that the change may negatively impact someone in a way that you had not foreseen, so listen and implement feedback wherever possible.

It is critical to provide emotional support and clear guidance. Each person's reaction to change may vary, and their specific needs and challenges need to be addressed.

Stage 3 – Exploration

At the end of stage two, people have the opportunity to accept or reject the change. The former of course, leads to its successful implementation. If stages one and two are managed well, this stage will be reached faster. Here, individuals and teams start experimenting and problem solving and begin to see the benefits of the change. An institution needs to provide training and opportunities that give them adequate time to test their new roles and responsibilities without too much pressure.

This stage is considered the 'turning point' on the curve, as acceptance sets in and performance starts to improve.

Stage 4 – Integration

This is where the new starts to become the norm. While reaping the benefits of change, remember to celebrate its successes. Once people experience success and rewards, it is easier for them to continue to comply. At the end of this stage, the organization has been rebuilt with new processes and mindsets in place.

The Change Curve is attributed to psychiatrist Elisabeth Kübler-Ross. It stems from her work on grief management and has many variations and adaptations and is widely used in organizational change management. [1] Its benefits lie in being able to track people's progress through change, giving them the ability to make their journey as fast and smooth as possible.

Facilitating Institutional Change

Failure to implement change is usually the result of human issues. While targets need to be defined to keep the 'what' consistent, the 'why' needs to resonate with various individuals. Let's say, a CEO of a pharmaceutical company wants to become No.1 in the market, a goal that may not be important to many of the employees. The motivations behind the goal however, can help give it meaning – being able to transform medicine, find new cures, grow as a team and reap individual rewards. It is important that the organizational goals provide individuals with a sense of meaning to keep them motivated.

Once you have a clear vision, there are four things that need to be in place:

- An understanding of why the change is required among individuals. This has to mean something to them personally.
- Systems and processes to help reinforce the new behavior.
- New skills and knowledge, provided through training.
- A change management consciousness, the culture of quickly onboarding and learning to handle change.

When an institution goes through a major change, it becomes the ideal time to build skills and leaders. A well-managed change initiative reorients the business, making sure that the best talent is put on the most critical tasks. On the flip side, this can be a period of uncertainty and individuals may need help to make the transition.

References

1. Kübler-Ross, Elisabeth., and David Kessler. *On Grief and Grieving: Finding the Meaning of Grief Through the Five Stages of Loss*. New York ; Toronto: Scribner, 2005.

About the Author:

Madhumita Saha is President of VentureBean Consulting. VentureBean Consulting is a management consulting firm in Bangalore focused on growth consulting and leadership development.

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REQUEST FOR CLARIFICATIONS AND EXTENSION OF FILING TIMELINE FOR AUDIT UNDER SECTION 4 OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016 ("RERA")

To,

Date: September 24, 2018

The Interim Real Estate Regulatory Authority - Karnataka
2nd Floor, Silver Jubli Block
Unity Building, CSI Compound
3rdCross, Misson Road, Bengaluru – 560 027

Dear Sir,

Sub: Request for clarifications and extension of filing timeline for audit under Section 4 of the Real Estate (Regulation and Development) Act 2016 ("RERA")

The Karnataka State Chartered Accountants Association (R) (in short **'KSCAA'**) is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community.

We have written to regulators and administrative bodies many a times populating issues and possible solutions. Herein, we are presenting before your good selves the difficulties and hardship faced by the trade sector and consultants at large in the domain of RERA implementation. We herein seek your redressal mechanism to alleviate the concerns and seek a reasonable extension of due date for furnishing audit certificate. Additionally, we request your good selves to provide us an opportunity to meet in person to present our views on the matter.

The objective of submitting this memorandum is to appraise your goodself of the pressing issues faced by the professionals with respect to audit stipulated under RERA and seek your valuable opinions to resolve the same. At the outset, we have reproduced below the extracts of Section 4 of RERA with respect to the requirement of annual audit, which reads as below:

"Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project."

In the ensuing paragraphs, we have outlined the issues and our recommendations.

A. Format of audit certificate yet to be notified

As your good-self may be aware, the format of audit certificate has not been notified yet by the interim Real Estate Regulatory Authority in Karnataka. As far as the present going is concerned, this is causing a significant hardship to the professionals. Considering that the due date (ie September 30, 2018) is approaching fast and the professionals are left with a very short window of 6 days to complete the audit and issue certificate, we would appreciate if the format of audit certificate is notified immediately to avoid ambiguities at a later stage, resulting from varied formats being used by professionals in the absence of any notified template. In addition to this, the formats for certificates related to quarterly updates of registered projects and withdrawal of sums from 70 percent project designated account should also be notified soon.

B. Audit certificate to be issued by a Chartered Accountant in practice

The draft template of audit certificate (draft template enclosed as**Annexure – A**) which was placed temporarily on the portal of the RERA authorities in Karnataka under the Downloads section (https://rera.karnataka.gov.in/downloadPage) indicated that the audit report is to be issued by the Statutory Auditor of the promoter entity. In this respect and in line with the requirement under Section 4 of RERA, we would request that the requirement be relaxed to the effect that such audit certificate could be issued by any Chartered Accountant in practice (and holding valid certificate of practice required under the regulations of the ICAI) and not necessarily restricted to the statutory auditors of the promoter entity.

C. Online mechanism for the filing of audit certificate

Currently, the mechanism for furnishing quarterly updates (as required under Section 11 of RERA read with Rule 15(D) of Karnataka RERA Rules) with respect to registered projects has not been activated on the Karnataka RERA portal. As such, we

are of the view that there should an online mechanism for the filing of audit certificate at least, as promoters outside the capital city of Bengaluru (where the office of the interim RERA authorities is situated), may find it tough to physically send the audit certificate within the stipulated timeline of September 30, 2018. Alternatively, it could be clarified that such audit certificate can also be e-mailed to the RERA authorities and such approach would be a valid compliance of furnishing audit certificate.

D. Clarifications with respect to technical positions

Considering that RERA is a newly enacted legislation and this is the first year of audit under RERA, there are possible divergent views on various technical issues such as:

- Whether land cost is to be considered for the purposes of calculating percentage of completion of a project?
- In case of inconsistencies in the percentage of completion of a project due to different set of rules applied by an Engineer, Architect and a Chartered Accountant, what would be the right approach for certifying percentage of completion in RERA audit?
- Whether audit under Section 4 of RERA required for projects registered with the authorities in the state of Karnataka on or after April 1, 2018 (with corresponding due date of September 30, 2018)?
- In case of registration as a single project, for a project comprising of landowner and developer share (area sharing joint development agreement) and where RERA auditor for the landowner share and the developer share are not the same, what should be the approach for certification under RERA audit?

In the interest of the stakeholders, we request your goodself that such issues be clarified by way of a detailed FAQ notes. KSCAA would be glad to work with your goodself to collate such technical issues identified by professionals with respect to audit under RERA and various other interpretational issues.

In view of these practical difficulties, proper justice does not seem to be made to RERA audit compliance and hence we would additionally request for an extension of due date for furnishing audit certificate.

We hope that our suggestions would be favorably considered. We also request you to involve us in deliberations in this regard.

Thanking you,

Yours sincerely,

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra Shetty President +91 9900214030	CA. Kumar Jigajinni Secretary +91 9480311197	CA. Vijay Sagar Shenoy Chairman, Representation Committee +91 9844003179

Workshop on RERA Audit - Challenges and Preparedness

CA Vinay Thyagaraj

Cross Section of Participants

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

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Together We Grow

SPORTS AND TALENT MEET 2018

For Family Members of ICAI

DATE: Sunday, 11th November 2018 @ all other cities | Event Starts at - 9.30 am

DATE: Sunday, 25th November 2018 @ Bengaluru | Event Starts at - 9.00 am

Events

- Drawing Junior
- Drawing Senior
- Rangoli & Flower decoration
- Pick & Speech
- Essay Writing
- Singing

Age Group

Drawing	-	Upto 10 years , 11-16 years, above 16 years
Rangoli	-	16 years & above
Pick & Speech	-	10 -16 years, above 16
Essay	-	Upto 16 years , above 16 years
Singing	-	Upto 16 years, above 16 years

Essay Topics

Upto 16 Years
- Swachh Bharat

Above 16 years
- Pros & Cons of Social Media

Event Places

Mysore, Mangalore, Udupi, Shivamogga, Bellari, Hubli, Belgaum, Bengaluru

Free Entry - Attractive Cash Prizes & Trophies

CONTACT DETAILS

CA Raghavendra Shetty
President, KSCAA

CA Kumar Jigajinni
Secretary, KSCAA

SPORTS & SKILL DEVELOPMENT COMMITTEE

Gowrish Bhargava
Chairman, M: 9008931787

Kishor Shetty
Convenor, M: 9739077064

EVENT CO-ORDINATORS

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CA Balaji, 8147810235

SHIVAMOGGA
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CA Sriram - 9731311234

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

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Together We Grow

SPORTS AND TALENT MEET 2018

TENNIS BALL CRICKET TOURNAMENT

FOR ICAI MEMBERS

VENUE
BEL SPORTS GROUND
BENGALURU

DATE:
24th Nov 2018
TIMINGS:
8AM TO 6PM

FIRST COME, FIRST BASIS - RESTRICTED TO 20 TEAMS

ENTRY FEES
Rs. 5,000/- PER TEAM
(INCLUDING TAXES)

REGISTRATION
OPENS ON 28/09/2018
CLOSES ON 16/11/2018
FIXTURES DRAWN ON 17/11/2018

COMPULSARY ONLINE REGISTRATION

VOLLEY BALL TOURNAMENT

FOR ICAI MEMBERS

VENUE
BEL SPORTS GROUND
BENGALURU

DATE:
24th Nov 2018
TIMINGS:
8AM TO 6PM

FIRST COME, FIRST BASIS - RESTRICTED TO 6 TEAMS

ENTRY FEES
Rs. 1,000/- PER TEAM
(INCLUDING TAXES)

REGISTRATION
OPENS ON 28/09/2018
CLOSES ON 16/11/2018
FIXTURES DRAWN ON 17/11/2018

COMPULSARY ONLINE REGISTRATION

WWW.KSCAA.COM

ATHLETICS

DATE: 24TH NOV 2018
VENUE BEL SPORTS GROUND, BENGALURU

MEN	WOMEN
100 mtrs	100 mtrs
200 mtrs	200 mtrs
400 mtrs	400 mtrs
Relay - 4x100 mtrs	Relay - 4x100 mtrs
Shot Put	Shot Put
Gunny Bag Running Race	Gunny Bag Running Race
Archery	Archery

ENTRY FEES Rs. 300/- PER Event (INCLUDING TAXES)

SHUTTLE BADMINTON TOURNAMENT

FOR ICAI MEMBERS AND FAMILY

FIRST COME, FIRST BASIS - RESTRICTED TO
CA Single Men 15 Entry, CA Single Women 15 Entry,
CA Doubles 20 Teams , Family Doubles 10 Teams

ENTRY FEES
CA-Rs. 300/- per Person, per Event
Family-Rs. 100/- per Team
(INCLUDING TAXES)

REGISTRATION
OPENS ON 28/09/2018
CLOSES ON 16/11/2018
FIXTURES DRAWN ON 17/11/2018
COMPULSARY ONLINE REGISTRATION

DATE: 25th Nov 2018, VENUE: KGS CLUB CUBBON PARK Opp. MS Building BENGALURU

SHUTTLE BADMINTON	TABLE TENNIS	CARROM	CHESS
Single - CA	Single - CA	Single - CA	CA
Doubles - CA	Doubles - CA	Doubles - Family	Family
Doubles - Family	FAMILY EVENTS (NO ENTRY FEES)		
LAWN TENNIS	PICK & ACT	Musical Chair	
Doubles - CA			

ENTRY FEES
CA: Rs. 300/- PER Event (INCLUDING TAXES)
Family: Rs. 100/- PER Person / Team (INCLUDING TAXES)

CA Gowrish Bhargava
Chairman, M: 9008931787

CA Raghavendra Shetty
President, KSCAA

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CA Kumar Jigajinni
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Rishab Shetty FILMS

FROM THE DIRECTOR OF RICKY & KIRIK PARTY

KICHCHA SUDEEPA PRESENTS

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ಕರಾವಳಿಪಾಡು ಕೊಡುಗೆ-ರಾಮಣ್ಣರೈ PIN: 671121

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50 DAYS

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