KSCAA NEWS BULLETIN

Upholding the Moral & Professional Excellence

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The best way to find yourself is to lose yourself in the service of others.

- Mahatma Gandhi

ONE DAY SEMINAR ON
TAX IMPLICATIONS ON REAL ESTATE SECTOR

On 11th October 2014
at 'Edinburgh Hall'
Hotel Fortune Park JP Celestial
5/43, Race Course Road
Anand Rao Circle, Bangalore

CPE 6 Hours* Unstructured

ADJOURNED 41st AGM

on 18th October 2014 11.00 AM
at 'Maharaja Hall'
The Bangalore City Institute
Basavanagudi, Bangalore-560004

From the President

ಸರ್ವರಿಗೂ ಗಾಂಧಿ ಜಯಂತಿ ಹಾಗೂ ವಿಜಯ ದಶಮಿ ಹಬ್ಬದ ಶುಭಾಶಯಗಳು

Dear Professional Colleagues,

With a month full of activities and varied news and events all around the world, would like to touch up on few points of professional and social interests having impact on our lives.

Firstly, the confusion created by the CBDT with its order extending the due date for filing the tax audit report u/s 44AB without extending the corresponding due date for filing return of income, where tax audit applicable. Representations have been submitted by different associations throughout the country, but no elucidation is received so far from CBDT in this regard. Pending clarification of issue from the CBDT or the ICAI , we are of the view that - in cases where tax audit reports could not be completed before 30th September, inform the assessee to file ITR based on financials on or before 30th September, being the due date for filing the return of income and if required, file revised return considering tax audit report. And further ask the assessee to pay the statutory arrears and the TDS defaults if any before 30th September 2014,

We hope good sense will prevail and CBDT will extend the due date of ITR to 30.11.2014 for Tax Audit cases for AY 2014-15.

Most of us would have watched the Prime Minister Narendra Modi's historic address to the nation on the occasion of 68th Independence Day. With his exhilarating address, the Prime Minister reinforced a much-needed hope that things can and will certainly change and need of everyone contribution to the Nation building. This inspiring address will go a long way in helping the Citizen overcome the cynicism. He also stressed on Clean India, which is most critical in the present day environment, the solution requires whole-hearted participation from every single Citizen of India. Let us all commit ourselves to this noble cause and contribute our might to it.

Apart from cleaning the filth, there is a greater need of cleaning up of corruption in our system and we Chartered Accountants must take the right step in this regard as advisors to the entrepreneurial community. Let us not be a part in any kind of corruption, advice clients to desist from the corrupt practices for getting the work done - may it be at tax departments, or MCA, or any other state or central Government departments. While Prime Minister calls for clean India by 2019, we urge for corruption free Nation well before that.

Further, the initiative by the PMO through *mygov.nic.in,* web-portal inviting suggestions, ideas and thoughts on various topics that concern India. We request you all to involve yourself, join the discussions, add value, find tasks that interest you and do your bit for India and be part of the initiative for better nation for better living.

Pradhan Mantri Jan Dhan Yojana, an ambitious scheme for comprehensive financial inclusion has been launched by the Prime Minister Narendra Modi on 28th August 2014. The scheme has been started with a target to provide 'universal access to banking facilities' starting with Basic Banking Account with Rupay Debit Card, inbuilt accident insurance cover of Rs. 1 lakh and RuPay Kisan Card. The Financial Services Secretary described this scheme as an important step towards converting Indian economy from cash based one into a cashless and digital economy.

Further, the recent macro-economic indicators suggest that the worst is behind us, and growth has started picking up. Steady corporate earnings, improving industrial output, easing inflationary situation and a stable domestic currency are giving a ray of hope to economic recovery. Signs of improvements in international relationships and positive outlook in the country calls for greater contributions from Chartered Accountant community, we need to gear-up with up-to-date knowledge and expertise to the challenge.

We had organised the past presidents and mentors meet on 4th September to seek their guidance and inputs on the association activities and the programmes to be conducted during the year 2014-15. We thank all the past presidents and well-wishers for attending and giving valuable suggestions for the new team of office bearers. I personally thank the EC members for generous contribution to the event.

CPE workshops on 'VAT & Service Tax' and 'TDS & Tax Audit issues' was held by Basavangudi CPE Study Circle on 26th August, 2014 & 8th September, 2014 was successful with good number of delegates attending the program. I thank all the office bearers of the association for actively co-ordinating and help the CPE study circle to conduct the programmes.

We have held a workshop jointly with FKCCI on Recent Changes in Indirect Taxes on 6th September, 2014 and the workshop was well attended. The workshop was very informative to the participants.

Further, we are planning to conduct a one day seminar on 'Tax implications on Real Estate Sector' on 11th October, 2014 at JP Fortune Hotel, Race Course Road, Gandhinagar Bangalore. Eminent speakers in the profession CA. Raghuraman, CA. K. K Chythanya, Advocate Aravind Raghavan and CA Sanjay Dhariwal have already confirmed as speakers to in this seminar. The details are given elsewhere in the news bulletin; we request your participation in the program to enrich the knowledge.

Continuing the flow of events, we celebrated the Teachers' day on 5th September. Our profession requires each one of us to be a student as well as a teacher and hence this day is special for us as well. Through this communique, I fondly remember all my Gurus, including my principals and seniors during article-ship and at the Association, and offer my deepest respect to each one of them. When we remember our great teachers, we should also think of how we should be a good teacher and mentor to the younger generation and be remembered for having inspired them and bringing positive changes in them.

I request members to make note of 41st adjourned AGM is being conducted at The Bangalore City Institute on 18th October, 2014 at 11 AM for transacting the adjourned agendas, details are published elsewhere in the news bulletin.

We can't conclude any message in September without remembering the day Swami Vivekananda created history by his soul-stirring address at World Parliament of Religions in Chicago on September 11th 1893. Let us remember the words of Swami Vivekananda and dedicate ourselves to furthering the cause of unity, brotherhood and world peace.

"Fill the brain with high thoughts, highest ideals, place them day and night before you, and out of that will come great work".

–Swami Vivekananda

In service of the Profession

CA. Raveendra S. Kore
President

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September 2014
Vol. 2 Issue 1
No. of Pages : 20

CONTENTS

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

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"ಗತವೈಭವದತ್ತ ಸಿ.ಎ. ಘನತೆ"

CA. Shiva Kumar. H

ಸಿ.ಎ. ಎಂಬ ಎರಡಕ್ಷರಗಳಿಗೆ "ವಿಶ್ವಸನೀಯ ಮೂಲಾಕ್ಷರಗಳು" (Alphabets of trust) ಎಂದು ಕೇಂದ್ರ ಸಿ.ಎ. ಸಂಸ್ಥೆ ಅಡಿಬರಹವನ್ನು (Tag line) ಅಂಟಿಸಿದೆ. ಸ್ವಾತಂತ್ರ್ಯಾನಂತರದ ದಶಕಗಳಲ್ಲಿ ಸಿ.ಎ. ವೃತ್ತಿ ತನ್ನ ಘನತೆ, ಗಾಂಭೀರ್ಯ, ವಿಶ್ವಾಸ, ವಿದ್ವತ್ತುಗಳಿಂದ ಸಮಾಜೋಪಯೋಗಿಯಾಗಿ ಕೆಲಸ ಮಾಡುತ್ತಲೇ ಬಂದಿದೆ. ಸಿ.ಎ. ಎಂದರೆ ಸಮಾಜದ ಎಲ್ಲಾ ವರ್ಗಗಳು ನಂಬಬಹುದಾದ, ವಿಶ್ವಾಸವಿಡಬಹುದಾದ, ಕಳಂಕರಹಿತವಾದ ಒಂದು ಘನತೆವೆತ್ತ ವೃತ್ತಿ ಎಂಬ ಕಾರಣಕ್ಕಾಗಿ ಸಿ.ಎ. ಎಂಬ ಎರಡಕ್ಷರಗಳು ವಿಶ್ವಸನೀಯ ಮೂಲಾಕ್ಷರಗಳೆಂದು ಬಿಂಬಿತವಾದದ್ದು.

ಕಳೆದ ಹತ್ತು ವರ್ಷಗಳಿಂದೀಚೆಗೆ ವಿಶ್ವಸನೀಯ ಮೂಲಾಕ್ಷರಗಳು ಎಂಬ ಅಡಿಬರಹ ಅಡಿಗಡಿಗೆ ಆಘಾತಕ್ಕೆ ಒಳಗಾಗುತ್ತಿರುವುದು ಹಲವಾರು ಸನ್ನಿವೇಶಗಳಲ್ಲಿ ಕಂಡುಬಂದಿದೆ. ನಮ್ಮ ದೇಶದಲ್ಲಿ ಆಗಿರುವ ಹಲವಾರು ಆರ್ಥಿಕ ಅಪರಾಧ ಪ್ರಕರಣಗಳಲ್ಲಿ ಸಿ.ಎ. ಗಳ ಪಾತ್ರ ಪ್ರಮುಖವಾಗಿ ಪ್ರಚಾರಕ್ಕೆ ಬಂದಿದೆ. ನೀತಿ ನಿಯಮಗಳಿಗೆ ತಿಲಾಂಜಲಿಯಿತ್ತು ವಾಣಿಜ್ಯೀಕರಣವನ್ನೇ ಗುರಿಯಾಗಿಸಿಕೊಂಡು ಸಮಾಜದಲ್ಲಿ ಆತಂಕ ಹುಟ್ಟಿಸುತ್ತಿರುವ ವೈದ್ಯಕೀಯ, ವಕೀಲಿ, ಶಿಕ್ಷಣ ವೃತ್ತಿಗಳ ಬೆಳವಣಿಗೆಗಳ ಜಾಡಿನಲ್ಲೇ ಸಿ.ಎ. ವೃತ್ತಿಯು ಸರಿದು ಹೋಗುತ್ತಿರುವುದು ಆತಂಕಕಾರಿಯಾಗಿದೆ. ಸಿ.ಎ. ವೃತ್ತಿಯ ಉನ್ನತ ಗುಣಮಟ್ಟ, ವಿಶ್ವಾಸಪರತೆ, ಘನತೆ, ಗೌರವಗಳು ಇತ್ತೀಚಿನ ದಿನಗಳಲ್ಲಿ ನಿಧಾನವಾಗಿ ಅವನತಿಯ ಹಾದಿಯಲ್ಲಿರುವುದನ್ನು ನಮ್ಮ ದೇಶದ ನ್ಯಾಯಾಂಗ ಮತ್ತು ಕಾರ್ಯಾಂಗಗಳು ಗುರುತಿಸಿ ದಾಖಲಿಸುತ್ತಿರುವುದು ಕಂಡುಬರುತ್ತಿದೆ. ಇನ್ನೂ ಸಮಸ್ಯೆಗಳು ಶೈಶವಾವಸ್ಥೆಯಲ್ಲಿರುವಾಗಲೇ ನಿಯಂತ್ರಿಸುವುದು ಮತ್ತು ಆತ್ಮಾವಲೋಕನ ಮಾಡಿಕೊಳ್ಳುವುದಕ್ಕೆ ಈಗ ಪರ್ವ ಕಾಲ ಬಂದೊದಗಿದೆ.

ಗುರುಕುಲ ಪದ್ಧತಿ ಮಾದರಿಯಲ್ಲಿ ಹಿರಿಯ ಸಿ.ಎ. ಗಳ ಮಾರ್ಗದರ್ಶನದಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಾ ಸ್ವಯಂ ಪ್ರಯತ್ನದಿಂದ ಅಧ್ಯಯನದಲ್ಲಿ ತೊಡಗಿ ವೃತ್ತಿಯ ಒಳಹೊರಗುಗಳನ್ನು ತೀರಾ ಹತ್ತಿರದಿಂದ ಕಂಡು ಪರಿಣತಿ ಪಡೆದು ಪರೀಕ್ಷೆಯಲ್ಲಿ ಪಾಸಾಗಿ ವೃತ್ತಿ ಜೀವನ ಪ್ರವೇಶಿಸುತ್ತಿದ್ದ ಪರಂಪರೆಯ ಪ್ರಕ್ರಿಯೆಯಲ್ಲಿ ಪರಿವರ್ತನೆಯಾಗಿ ದೇಶದೆಲ್ಲೆಡೆ ಮೈಚಾಚಿರುವ ತರಬೇತಿ ಕೇಂದ್ರಗಳಲ್ಲಿ ತರಗತಿ ಮಾದರಿಯಲ್ಲಿ ಪಾಠ ಕೇಳಿ ಸಿ.ಎ. ಪರೀಕ್ಷೆಯಲ್ಲಿ ಪಾಸಾಗಿ ಅನುಭವದ ಪಕ್ವತೆಯಿಲ್ಲದೆ ಹೊರಬರುತ್ತಿರುವ ಹೊಸ ಪೀಳಿಗೆಯಿಂದಾಗಿ ಸಿ.ಎ. ವೃತ್ತಿ ಸಂಕಷ್ಟದಲ್ಲಿದೆ. ಅತಿಯಾದ ಅಂತರ್ಜಾಲ ಬಳಕೆ, ಕೈಬೆರಳ ತುದಿಯಲ್ಲಿ ಕುಣಿಯುವ ಕಂಪ್ಯೂಟರ್‌ಗಳು, ಪೆನ್ನು ಕಾಗದ ಬಳಸದೆ ಗಳಿಸಿದ ಜ್ಞಾನ, ಸಿದ್ಧ ಮಾದರಿಯ ಪಠ್ಯಗಳು ಇವೆಲ್ಲಾ ವೃತ್ತಿ ಪರೀಕ್ಷೆಯ ವಿದ್ಯಾರ್ಥಿಗಳು ವಿಷಯದ ಆಳಕ್ಕೆ ಇಳಿಯುವುದನ್ನು ತಪ್ಪಿಸುತ್ತಾ ಶ್ರೀಘ್ರ ಯಶಸ್ಸಿನೆಡೆಗೆ ಎಳೆದೊಯ್ಯುತ್ತಿರುವುದು ಎಲ್ಲಾ ವೃತ್ತಿಪರ ಕೋರ್ಸುಗಳಲ್ಲಿ ನಡೆಯುವಂತೆ ಸಿ.ಎ. ವೃತ್ತಿಯಲ್ಲೂ ಆಗುತ್ತಿದೆ. ಆದ್ದರಿಂದಲೇ ಇಂದು ರಕ್ತದೊತ್ತಡವನ್ನು ಅಳೆಯಲು ಬಾರದ ವೈದ್ಯರು, ಗೆರೆಗಳನ್ನು ಎಳೆಯಲು ಆಗದ ವಾಸ್ತುಶಿಲ್ಪಿ ತಂತ್ರಜ್ಞರು, ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿ ಸಮರ್ಪಕವಾಗಿ ಮೆಮೊ ಸಲ್ಲಿಸಲಾಗದ ವಕೀಲರು ಕಾಣಸಿಗುತ್ತಿರುವ ಹಾಗೆ ಕಂಪ್ಯೂಟರ್ ಸಾಫ್ಟ್‌ವೇರ್‌ಗಳ ದೆಸೆಯಿಂದಾಗಿ ಲೆಕ್ಕ ಬರೆಯಲು ಬಾರದ ಯುವ ಸಿ.ಎ. ಗಳನ್ನು ಕಾಣುವ ಪರಿಸ್ಥಿತಿ ಬಂದೊದಗಿದೆ.

ಜಾಗತೀಕರಣದ ಫಲವಾಗಿ ಬಹುರಾಷ್ಟ್ರೀಯ ಕಂಪನಿಗಳಲ್ಲಿ ಆಕರ್ಷಣೀಯ ವೇತನಕ್ಕೆ ಕೆಲಸ ಮಾಡುವ ಸಿ.ಎ. ಗಳು ಕಾಲಾನುಕ್ರಮದಲ್ಲಿ ಸ್ಥಳೀಯ ಕಾನೂನು ಕಟ್ಟಳೆಗಳ ಬಳಕೆಯಿಂದ ವಂಚಿತರಾಗಿ ತಮ್ಮ ಮೂಲದ್ರವ್ಯವಾದ ಸಿ.ಎ. ವೃತ್ತಿ ಕುಶಲತೆಯನ್ನು ಕಳೆದುಕೊಂಡು ಕ್ರಮೇಣ ಅಪ್ರಸ್ತುತರಾಗುತ್ತಿರುವ ಉದಾಹರಣೆಗಳು ಹೆಚ್ಚುತ್ತಿವೆ. ವೃತ್ತಿಪರ ಕುಶಲತೆಯನ್ನು ಹೆಚ್ಚಿಸುವ ಮತ್ತು ಹೊಸ ಬೆಳವಣಿಗೆಗಳೊಂದಿಗೆ ಸಂಪರ್ಕ ಕಲ್ಪಿಸುವ ಕಾರ್ಯಕ್ರಮಗಳು ರೂಢಿಯಲ್ಲಿದ್ದರೂ ಅವು ಕೇವಲ ಹೇರಿಕೆಯ ಮತ್ತು ತೋರಿಕೆ–ಯ ರೂಪದಲ್ಲಿರುವುದರಿಂದ ಉದ್ದೇಶಿತ ಪರಿಣಾಮ ಬೀರಲಾಗುತ್ತಿಲ್ಲ. ವಿಶ್ವದಾದ್ಯಂತ ಸಮರೋಪಾದಿಯಲ್ಲಿ ಬೆಳೆಯುತ್ತಿರುವ ವಾಣಿಜ್ಯ ಚಟುವಟಿಕೆಗಳು ಮತ್ತು ಅವುಗಳನ್ನು ನಿಯಂತ್ರಿಸಲು ಬರುತ್ತಿರುವ ಹೊಸ ಕಾನೂನುಗಳನ್ನು ಅರ್ಥೈಸಿಕೊಳ್ಳಲು, ಸಂಬಂಧಿಸಿದ ಲೆಕ್ಕ ಪತ್ರಗಳನ್ನು ನಿರ್ವಹಿಸಲು ಸಿ.ಎ. ಸಮುದಾಯ ಸನ್ನದ್ಧವಾಗಬೇಕಿದೆ.

ತನ್ನ ಸಾಮಾಜಿಕ ಜವಾಬ್ದಾರಿಯಿಂದ ಜಾರಿಕೊಳ್ಳುತ್ತಾ, ಹೆಚ್ಚುತ್ತಿರುವ ಲೋಪದೋಶಗಳಿಂದ ಸಮಾಜಕ್ಕೆ ಉಪಯುಕ್ತವಾಗದೆ ಹೋಗುತ್ತಿರುವ ಸಿ.ಎ. ವೃತ್ತಿಗೆ ಇತ್ತೀಚೆಗೆ ಹೊರಬಂದ ಮುಂಬೈ ಆದಾಯ ತೆರಿಗೆ ಮೇಲ್ಮನವಿ ನ್ಯಾಯಪೀಠದ ತೀರ್ಪು ಎಚ್ಚರಿಕೆಯ ಗಂಟೆಯಾಗಿದೆ. ಗಂಭೀರವಾದ ಆತ್ಮಾವಲೋಕನ, ದೂರದೃಷ್ಟಿ, ನಿರಂತರ ಅಧ್ಯಯನ, ಸಮರ್ಥವಾದ ನಾಯಕತ್ವ, ಸಾಂಘಿಕ ಚಿಂತನೆಗಳಿಂದ ಸಿ.ಎ. ವೃತ್ತಿಯ ಘನತೆ, ಗಾಂಭೀರ್ಯ, ವಿಶ್ವಾಸಗಳನ್ನು ಪುನರ್ ಪ್ರತಿಷ್ಠಾಪಿಸಿ ಸಿ.ಎ. ಎಂಬ ವಿಶ್ವಸನೀಯ ಮೂಲಾಕ್ಷರಗಳಿಗೆ ಅನ್ವರ್ಥವಾಗಿಸುವ ಕಾಲ ಸನ್ನಿಹಿತವಾಗಿದೆ ಅಂತಹ ಕೆಲಸ ತಡವಾಗುವುದಕ್ಕಿಂತ ಮೊದಲೇ ಸಕಾಲದಲ್ಲಿ ಕಾರ್ಯಗತವಾಗುವುದು ಶ್ರೇಯಸ್ಕರ. ■

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

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NOTICE

Notice is hereby given to the members of the Karnataka State Chartered Accountants Association that the adjourned Forty-First Annual General Meeting of KSCAA will be held at 11.00 AM on Saturday, 18th October 2014 at Maharaja Hall, The Bangalore City Institute, No.8, Pampa Mahakavi Road, Opp:Makkalakoota, Basavanagudi, Bangalore-560004 to transact the following business :

AGENDA :

1. Item no. 2 of the Original Notice -To consider & adopt the Annual Report of the Executive Committee.
2. Item no. 3 of the Original Notice -To consider & approve the audited accounts for the year ended 31stMarch 2014
3. Item no. 4 of the Original Notice -To appoint the Auditors for the year 2014-15 and fix their remuneration.

By order of the Executive Committee
Sd /-
CA. Raghavendra Puranik
Secretary

Place : Bangalore
Date :11.09.2014

ANNEXURE TO NOTICE:

At the Forty-FirstAnnual General Meeting held 6.30 PM on Tuesday, 15th July 2014, Members discussed various issues including the qualified accounts and the Auditor's Report on the financial Statements of the Association. After discussions the Members unanimously resolved to adjourn Forty-FirstAnnual General Meeting to 18th October 2014 to consider and approve the Audited Accounts, Annual report and appointment of auditors for the year ended 31st March 2014 of the Association and related matters.

NOTE:

Members are requested to bring their copy of Annual Report to the AGM; Extra copieswill not be provided at the Meeting.

Addendum to KSCAA 41st Annual Report dated 24 June 2014

EXECUTIVE COMMITTEE EXPLANATION FOR THE AUDITOR QUALIFICATIONS

1. Inrespect of Hubli Summit Conference advertisement receivable of Rs.80,000 as mentioned in the Auditor's Report, the Executive Committee is following up with immediate past President & Secretary to use their good office to collect the said amount at the earliest.
2. The Executive Committee is following up with immediate past President & Secretary for collecting the amount from KLJ Publication.
3. Immediate past Secretary has collected a post dated cheque from Mr. Sai Prasad and same will be presented to the Bank on the due date.
4. The vacation of rented premises has been discussed in the Building Advisory Committee(BAC). As per recommendation of BAC, the present Executive Committee is pursuing with landlord for the waiver of the rent if the premises continued or otherwise the final decision will be taken in consultation with BAC, accordingly financial implication if any will be appropriately dealt in the current year accounts.

AUDITORS

The present auditor M/s. NNR & Co, Chartered Accountants, Bangalore, retire at the conclusion this Annual General Meeting. Since one of the partner of the firm is elected as Executive Committee member, they expressed their inability to continue as auditor. We have received letter of expression of interest from M/s. Patil Kabbur & Associates, Bangalore and M/s. T .V. Veerabhadrappa & Co., Bangalore

INDEPENDENT AUDITOR'S REPORT

TO THE MEMBERS OF KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (REGD)

We have audited the Balance Sheet of **M/s. KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (REGD) (KSCAA)**, #7/8, 2nd Floor, Shoukath Building, S.J.P Road, Bangalore – 560002 as at 31.03.2014 and the Income and Expenditure Account for the year ended on that date, and a summary of significant accounting policies and other explanatory information annexed thereto.

In the light of the decisions taken in the 41st Annual General Meeting of KSCAA held on 15.07.2014 and further clarifications and documents provided to us by the management, we are revising our earlier Audit Report dtd. 24.06.2014.

Management's Responsibility for the Financial Statements

The Executive Committee Members of KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (REGD) is responsible for the preparation of these financial statements that give a true and fair view of the financial position, in accordance with the requirements of Karnataka Societies Registration Act, 1960. This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Associations preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion except the following qualifications:

Qualification:

1. Hubli Summit Conference Advertisement Receivable Rs. 1,80,000/-, out of which Rs. 50,000/- receivable from CA GV Hegde, Rs. 20,000/- from NS Infotech Hubli, and Rs. 10,000/- from Kanakadasa Education, still not received till the date of this report and the balance confirmations from these parties were not available for our verification.
2. A sum of Rs. 10,000 from KLJ Publication receivable towards advertisement/sponsorship of 26th State Level Conference. This balance is not received till the date of this audit report and balance confirmation from this party was not available for verification.
3. A sum of Rs. 50,000/-, vide Ch. No. 000409, dtd. 22.01.2014 paid to Sri Sai Prasad towards advance for new building. Approval from the Executive Committee not obtained and we were informed that the deal has been cancelled. A post dated cheque for Rs.50,000 has been received and is subject to realization.
4. Rent for office premises for the period November 2013 till 31.3.2014, amounting to Rs. 74,496/- is not provided in the books of accounts stating the notice of vacation has been issued to the owner of the premises. However the premises is not vacated by the association till the date of this report.

Report on other legal and regulatory requirements

i. We have obtained all the information which to the best of our knowledge and belief was necessary for the purpose of the audit.

ii. In our opinion, proper books of accounts has required by law have been kept by the association so far as appear from our examination of those books.

iii. The Balance Sheet and the Income & Expenditure Account dealt by this report are in agreement with the books of account.

Qualified Opinion

In our opinion and to the best of our information, and according to the explanation given to us, the said accounts read with the schedules and notes thereto, subject to the above said qualifications, are prepared, in all material respects, in accordance with the Karnataka Societies Registration Act, 1960 and give a true and fair view in conformity with the accounting principles generally accepted:

a. In case of Balance Sheet, the State of Affairs of the above named Association as at 31st March 2014.

b. In case of the Income and Expenditure Account, the excess of expenditure over income, for the year ended 31st March 2014.

For NNR & Co.,
Chartered Accountants
ICAI FRN : 011162S

(NITHIN M.)
Partner
MM No. 212134

Place: Bangalore
Date: 10.09.2014

COLLECTIVE INVESTMENT SCHEMES

CA. S. Krishnaswamy

- **SEBI Act- S.11AA**
- **Lead SC case:- P.G.F.LTD and others**
- **Violation of Registrations norms deemed fraudulent**
- **Cash Transactions barred**
- **Auditor Beware- Avoid keeping bad company**
- **Illustrations:- 1.PACL -2. Sarada Group**

There has been no dearth of deviant behaviors in the matter of Collective Investment Scheme (CIS) floated by unscrupulous promoters. Auditors have a special responsibility in respect of such promoters and promoted enterprises. SEBI has a regulation on collective Investments schemes it U/s .11AA of the Income Tax Act. SEBI has implemented the IOSCO principle 17 in regard to CIS" The Indian legal system recognizes two types of CIS (i) Mutual Funds regulated by a separate regulation issued by SEBI (2) Collective Investment scheme. "The Regulations for CIS were initially developed to regulate activities such as plantations and agro-bonds. The scope is however extendable from these two activities to any activity that meets the CIS criteria as per the Act. SEBI has been active in pursuing enforcement actions, including criminal sanctions, against entities that have been found to be conducting such activities without authorization. There are currently no CIS in operation.

1.The lead case on the scope of SEBI Power is

P.G.F.LTD AND OTHERS v. UNION OF INDIA AND ANOTHER (2013)179 Comp Cas 352 (SC) . The appellants had challenged SEBI jurisdiction and also the constitutional validity of the relevant section. The Apex Court explained and held.

Definition of CIS

"Section 11 AA of the Securities and Exchange Board of India Act, 1992, talks of any scheme or arrangement, which would fall within the definition of a collective investment scheme. Section 2(ba) under the definition clause states that a collective investment scheme would mean any scheme or arrangement, which satisfies the conditions specified in section 11AA, which defines a collective investment scheme discloses that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry, etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences. As a matter of facts the provision does not make any reference to agricultural or any other specific activity and there is no question of testing the validity of section 11 AA in the anvil of entry 18 of List II of the Seventh Schedule to the Constitution. Section 11AA was not intended to cover an activity relating to agriculture and its development and , therefore, does not conflict with entry 18 of List II of the State List.

Protecting Gullible investors

The implication of section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale –cum-development of such agricultural land. By seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment gets registered with the authority concerned and the provision would further seek to regulate such scheme in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded.

The object of introducing section 11AA was to protect gullible investors most of whom are poor and uneducated or retired personnel or those who belong to the middle income group and who seek to invest their hard earned retirement benefits or savings in such scheme with a view to earn some sustained benefits or with the fond hope that such investment will appreciated in course of time.

Sub-clauses (i) to (viii) of sub – section (3) exclude from the operation of section 11AA schemes and arrangements already governed under various statutes and operated by a co-operative society or State machinery. Schemes/ arrangements operated by all others, namely, other than those who are governed by sub-section (3) of section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors. Schemes which would fall under sub-section (2) of section 11AA would consist of a marketing strategy adopted by promoters, by reason of which, the common man who is eager to make an investment falls easy prey to attractive persuasion of such marketing experts who ensure that those who succumb to such persuasions never care to examine the hidden pitfalls under the scheme, which are against the interests of the investors,

apart from various other stipulations, which would ultimately deprive the investors of their entire entitlement, including their investments. The investors would never be aware of the nature of constraints created in the documents, which would virtually wipe out whatever investment was made by them in course of time and ultimately having regard to the legal tangles which such investors would have to undergo by spending further monies in litigation, ultimately prefer to ignore their investments. Thereby, the promoters stand to gain unlawfully.

In reality what sub-section (2) of section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

Constitutionally valid

Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development. In other words, there is no scope to apply entry 18 of List II of the Seventh Schedule to the Constitution in order to strike it down on the ground of legislative competence.

2. Violation considered as fraudulent

The Securities and Exchange Board of India (SEBI) has clarified that the existing list of activities coming under fraudulent and unfair trade practices can be further expanded whenever the need arises.

all activities of money mobilization through unauthorized Collective Investment Schemes (CIS) would face stronger penalties prescribed under the revised SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations.

The board has approved the "proposal to declare illegal mobilization of funds without obtaining a certificate under the SEBI (Collective Investment Schemes) Regulations, 1999 as a fraudulent and unfair trade practice," according to an official release.

"This amendment has been made to impose deterrent adjudication penalties on unregistered CIS entities mobilizing money,

The latest move comes against the backdrop of rising instances of fraudulent money pooling activities, including by a number of West Bengal-based groups such as Saradha, Rosevalley and Sumangal. There have been also many innovative but illegal fund-raising schemes in the name of emu farming, goat rearing, cattle and butter, and holiday memberships.

Sebi has already got stronger powers to deal with all kinds of money pooling activities, including by unlisted companies, involving Rs 100 crore or more.

3. Cash transactions barred

SEBI made it compulsory for all investments into CIS (Collective Investment Scheme) funds to be made through banking channels, and not in cash, to thwart any money laundering activities through such schemes.

Besides, the new norms would also help improve transparency in fund-garnering activities through CIS activities and would make it easier to identify the source of funds and real investors involved in such schemes.

A large number of cases have come to light in past few years where gullible investors have been defrauded through illegal CIS activities, while their operators claim to have returned the money when caught by regulators and law enforcement agencies.

As per the regulation, "monies payable towards subscription of units of collective investment scheme shall be paid through cheque or demand draft or through any other banking channel, but not by cash."

For launching any such scheme, a person needs to make an application for registration as a Collective Investment Management Company provided that any scheme which is otherwise regulated or prohibited under any other law will not be deemed to be a CIS.The Collective Investment Management Company will enter into an agreement with a depository for dematerialization of the units of the scheme proposed to be issued.

The Collective Investment Management Company will comply with Know Your Client guidelines.

The government ordinance, promulgated in September 2013for second time, provides for regulation of pooling of funds under any scheme or arrangement, involving a corpus amount of Rs. 100 crore or more, to be deemed to be a CIS activity.

4.Auditors beware :- don't keep bad company

In most of the cases where SEBI has come across violation of the regulations like non- registration it has ordered an independednt audit. The resultant audit repot carries very adverse findings such as ;(Eg)

Glitter Gold Plantations Ltd (2014 /83 Comp Cas 47 (Delhi) Suchitra Gupta v SEBI -Feb 24,214 - Auditor report extract.

"As pointed out in earlier paragraphs the company has not maintained any register of unit holders detailing the addresses.

The company has not maintained the records of application form received from the unit holders detailing the addresses.

All the repayments to the unit holders were made in cash only for which documentary evidence was not available.

we have observed that only the signatures, thumb impression was available on the unit certificate, there was no mention of the amount repaid, and we are unable to verify the amount paid to each unit holder in the absence of any documentary evidence.....

Glitter Gold Plantations Ltd., opened the bank account on March 26, 1996, most of the bank statements were manual as provided by the company for the following period;

March 26,1996 to June 17,1996

July 1, 1996 to March 1,1997

April 26, 1997 to may 4,2005

These bank statements are not legible hence we could not verify any entries on it. we are unable to comment upon any payments made through bank".

5. Illustrations

a) PACL - a case of fraud

The Securities& Exchange Board of India (SEBI) while asking Delhi - based PACL Ltd(formerly pearls Agrotech Corporation), to refund Rs.49,100 crore to investors within three months also barred its promoters and directors from raising any money from investors.

In its order, the market regulator said,"The total amount mobilised (by PACL) comes to Rs.49,100 crore. This figure could have been even more if PACL had provided the details of the funds mobilised during the period of 1April 2012- to 25 February 2013.

Sebi has decided to crack the whip on Rajasthan-based real estate major Pearl Agrotech Corporation (PACL). The company has been asked to refund Rs 50,000 crore to people who invested in its collective investment scheme since 2005. Sebi, armed with Supreme Court judgment on Friday passed an order against PACL, its promoters and directors. Sebi has abstained them from collecting any money or launching any new collective investment scheme. This is by far the largest refund order from Sebi as it eclipses the Rs 24,000 crore refund order on Sahara group companies. PACL has raised over Rs 49,100 crore since 2005 as per the submissions made by the company to Sebi. The market regulator fears that this amount could be more than Rs 50,000 crore since the company failed to furnish details between April 2012 and February 2013. The company has been dealing with buying and selling of land assets from money raised from over 5.85 crore investors since 2005. It claims it has paid off 1.22 crore investors and that the outstanding that it owes to over 4.63 crore investors stands at over Rs 29,400 crore. As per the submissions of PACL, it has agricultural and commercial land assets worth over Rs 11,700 crore. Sebi in its order has asked the company to wind up the operations and refund the money with promised return within 3 months and submit a report in 15 days after the completion of the refund process.

b) Saradha Group financial scandal

The Saradha Group financial scandal is a financial scam that was caused by the collapse of a Ponzi scheme run by Saradha Group, a consortium of over 200 private companies that was believed to be running a wide variety of collective investment schemes (popularly but incorrectly referred to as chit fund) in Eastern India. The group collapsed in April 2013, causing an estimated loss of INR 200–300 billion (US$4–6 billion) to over 1.7million depositors. The Union Government through the Income Tax Department and Enforcement Directorate also launched a multi-agency probe to investigate the Saradha scam, as well as other similar Ponzi schemes. In May 2014, the Supreme Court of India citing inter-state ramifications, possible international money laundering, serious regulatory failures and alleged political nexus transferred all investigations in the Saradha Scam and other Ponzi schemes to Central Bureau of Investigation, the federal investigative agency.

Financial operations

Like all Ponzi schemes, Saradha Group promised astronomical returns in fanciful but credible investments. Its funds were sold on commission by agents who were recruited from local rural communities. As much as 25–40% of the deposit was returned to these agents as commissions and lucrative gifts to quickly build up a wide agent pyramid. To keep ahead of regulators, the group used a nexus of companies to launder money.

Initially, the front-line companies collected money from the public by issuing secured debentures and redeemable preferential bonds. However, under Indian Securities regulations and section 67 of the Indian Companies Act, 1956 a company cannot raise capital from more than 50 people without issuing a proper prospectus and balance sheet. Its accounts must be audited. It must also have explicit permission from the market regulator Securities and Exchange Board of India (SEBI).

SEBI first challenged Saradha Group in 2009. Saradha Group responded by opening as many as 200 new companies to create more cross-holdings. This created an extremely complex tiered corporate structure which made it difficult to pin blame on any one company.

After SEBI warned the state government of West Bengal about Saradha Group's apparent chit fund activities in 2011, Saradha Group changed its methods again. This time, it acquired and sold large numbers of shares of various listed companies, siphoning off the proceeds of the sale to accounts which have not yet been identified. By 2012, SEBI was able to identify the group's activities as CIS, not chit fund, and demanded that it immediately stop operating its investment schemes until it received proper permission from SEBI. However, Saradha Group ignored SEBI, and continued to operate in the same manner until it collapsed in April 2013.

continue.....

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Input Tax Credit Vs Monthly Returns under the KVAT law

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

The Division Bench of Hon'ble High Court of Karnataka in the case of M/s Infinite Builders and Developers Bangalore Vs Additional Commissioner of Commercial Taxes Zone II Bangalore vide STA No 59 of 2009 and 75 to 85 of 2013 dated 30.5.2013 observed that as and when a statutory provision mandates compliance in a particular manner in examining as to whether the compliance is served or otherwise a broad based approach is not called for, more so in tax matters , when the liability is strictly as per the sections and compliance both on the part of the revenue and the part of the assessee.

The facts of the Infinite Builders case are that the appellant company had not filed true VAT returns. The appellant had filed incorrect returns by declaring NIL tax liability for the period Apr'2005 onwards even though there were taxes dues during the said period. This was pointed out by the Intelligence wing of the department during its inspection of the Appellant on 25.03.2006. A second inspection was conducted by the Asst Commissioner of Commissioner Taxes on 20.12.2006 whereby it was still found that the appellant was continuing to file NIL returns even though there were taxable turnovers and tax dues. Only on 12.01.2007 that the appellant had filed the revised returns for the period May'2006 to Dec'2006 (that too by declaring a reduced taxable turnover as compared to real taxable turnover. The appellant had also declared the Input tax credits - evident from the Para 26 & 27 of the Order). In such a scenario the appellant's case was taken up for re-assessment to the best of the judgment by the assessing officer. In Para 27 of the HC Order it is iterated that the appellant had declared very low turnovers in the revised returns as compared to the real turnovers liable for tax. Further, it is iterated that the Input tax credits are declared in the revised returns. However no sufficient material evidences were produced before the assessing officer for allowing such credits. The Honourable High court has come to such conclusion in such a scenario, wherein no material evidences for Input tax credits were provided before assessing officers and also revised returns filed by the appellants were materially incorrect as compared to the actual turnovers as per books of accounts, with an intention to evade taxes.

In the case of CENTUM INDUSTRIES PVT LTD VS STATE OF KARNATAKA 2011(71) KAR.L.J 341 DB, wherein the appellant was possessing valid tax invoice for the purchases made from the registered dealer. The purchases were made in the month of June 2006. The Appellant claimed the credit of input tax paid on these purchases not in the month of July 2006 but in the month of Feb 2007. This claim of input tax credit was denied to the Appellant only on the ground that the selling dealer did not exist at the time the authority of the department checked through their system.

The Hon'ble Tribunal on consideration of all the facts and circumstances held that the input tax credit cannot be denied to the appellant. It was observed that as long as the appellant is in position of a valid tax invoice indicating the payment of tax to his selling dealer, input tax should not have been denied. It was for the departmental authority to ensure that the selling/ supplying dealer who is duly registered is proceeded against for collection of the taxes so collected. The appellant did not claim the benefit of credit in the usual course in the returns filed for the month of July 2006 that is the subsequent month of purchase. The appellant also did not file the revised return within 6 months for claiming this input tax credit it is further observed by the Hon'ble Tribunal that allowing input tax credit is a statutory promise made to the dealer buying the goods from the registered dealer by paying the tax mentioned in the tax invoice. The section 70 of the KVAT Act, 2003 does not cast the burden on such buying dealer to prove the payment of tax by such selling dealer to government. Further it is held that there is nothing in the law stipulating that if input tax is not claimed during the succeeding month, the dealer would forfeit the claim to input tax in the absence of such intention under the act the tribunal held that the assessing authority and the first appellate authority were not justified in denying the input tax credit and accordingly ordered that the claim of input tax should be allowed to the appellant though claimed belatedly.

The Honorable High court in the decision of Centum Industries ts-376-HC-2014 (Kar)-VAT dated 31st July 2014 wherein, it is held that, if input tax credit is not claimed in original return as well as in the revised return by filing within six months, Input tax credit cannot be allowed even if it is filed in the subsequent tax period. The Honorable High Court at para twelve held, that as per section 10(3) input taxes must be accounted in the books of account, if the same is not accounted but accounted in the subsequent tax period, and input tax credit cannot be allowed under law.

As per Section 10 of the KVAT Act, 2003, net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in respect of that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act. Input tax credit is a vested right of the Appellant. The same should not be denied even on the basis that the same is not claimed in the returns.

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INDIRECT TAXES UPDATE – AUGUST 2014

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

A. NOTIFICATIONS AND CIRCULARS

a) Notifications

I. Service Tax

i) Exemption for Kailash Manas Sarovar and Haj pilgrimage:

Services by (a) Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking or (b) 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002 (35 of 2002) in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement would be exempt from service tax [Notification No. 17/2014-ST dt. 20.08.2014]

ii) All amendments made in Finance (No.2) Act, 2014 in respect of service tax (amendment to definitions, negative list and rate of exchange) would be effective from 1st of October 2014 [Notification No. 18/2014-ST dt. 25.08.2014]

iii) Determination of rate of exchange: Rule 11 has been inserted in Service Tax Rules,1994 to provide for manner of determination of rate of exchange. In terms of the said rule rate of exchange for determination of value of taxable service shall be the rate as applicable in terms of generally acceptable accounting principle. [Notification No. 19/2014-ST dt. 25.08.2014]

II. Excise

Amendment to Cenvat Credit Rules:

iv) Rule 12AAA of said rules empowers Central Government to impose certain restrictions on the assessee in order to ensure there is no misuse of the scheme. Earlier the said rule does not cover service providers in its ambit. Present amendment is cover service providers also within this provisions. [Notification No. 25/2014-CE (N.T.) dt. 25.08.2014]

v) Rule 9: Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate would also qualify to be a valid document to avail credit .[Notification No. 26/2014-CE (N.T.) dt. 27.08.2014]

B. IMPORTANT DECISIONS

1) M/s BHARTI AIRTEL LTD vs. CCE., 2014-TIOL-1452-HC-MUM-ST

Issue: Whether duty paid on tower parts, green shelter used by Cellular phone service provider

Held: Not allowing credit on tower parts, green shelter / pre-fabricated buildings, the High Court held that the towers being immovable structures can neither be regarded capital goods so as to fall within the definition of 'capital goods' appearing in Rule 2(a) of the Credit Rules, nor can be categorized as 'input' applying Rule 2(k) of the Credit Rules.

The High Court further observed that credit cannot be allowed on the CKD or SKD condition of the tower and parts as such items fall under the chapter heading 7308 of the Central Excise Tariff Act. Heading 7308 is not specified in clause (i) or clause (ii) of rule 2 (a)(A) of the Credit Rules so as to be capital goods.

2) M/s Amrit Bottlers Private Ltd Vs. CCE, 2014-TIOL-1436-HC-ALL-CX

Facts: The appellant is engaged in the manufacture of aerated water. The officers also found that the aerated water was drained out without payment of duty and without accounting the production. It was observed that the draining out was not on account of being unfit for human consumption, but on account of the fact that it was not in conformity with the specifications provided under the Prevention of Food Adulteration Act and Weights and Measures Act, 1976. Duty was demanded on quantity of water drained out as above.

Held: The High Court setting aside the demand held that the product manufactured by the assessee undergoes a screening test and only thereafter finished goods which are not contaminated, under filled, over filled or badly crowned bottles are entered in R.G.-1 register. The bottles which are under filled or over filled or badly crowned cannot be marketed and once goods which are produced are not marketable the same cannot be termed as manufactured goods for the purpose of levy of duty of excise. Therefore, there is no requirement to account for such bottles and pay duty.

3) S.V. Jiwani Vs. CCE., 2014 (35) S.T.R. 351 (Tri. – Ahmd):

Facts: Assessee executed works contract and remitted service tax on entire value of contract. Assessee availed

Cenvat credit of the excise duty paid on inputs and input services in terms of the provisions of Cenvat Credit Rules, 2004. The department contested that the appellant is not eligible to avail Cenvat credit on inputs and they are required to adopt Rule 2A of service tax valuation rules for payment of service tax

Held: In this connection, the Tribunal held that assessee has different options for computation of value of services for remittance of tax. Among such options, is to discharge Service Tax liability at full rate. There is no requirement that the assessee has to adopt a particular option only. Therefore, the assessee has rightly availed credit and discharged service tax on entire contract.

4) Conwood Pre Fab Ltd Vs. CCE, 2014-TIOL-1618-CESTAT-MUM

Fact: Jawaharlal Nehru Port Trust (JNPT) awarded contracts to two main contractors for commercial construction in the port area. These contractors further awarded a contract to the present appellant for laying paver blocks at JNPT. Department demanded service tax from the appellant under the heading Business auxiliary services on the ground that the appellant is providing service on behalf of the client.

Held: Tribunal held that the activity undertaken by the appellant, i.e. laying of paver blocks more appropriately comes under the scope of 'commercial or industrial construction service' and no service tax is liable to be paid as industrial construction service in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams are specifically excluded.

5) Hindustan Petroleum Corpn Ltd Vs CCE. 2014-TIOL-1616-CESTAT-MUM

Facts: Appellant a manufacturer of petroleum products, received the Lube Base Oil through pipeline. There was a short receipt of base oil ranging from 0.1% to 0.72% as compared to the quantity invoiced. Department initiated proceedings to deny credit to the extent of short receipt.

Held: Allowing the credit on quantity as invoiced the Tribunal held that, if goods are transported through pipeline or by other means, if they are not solid, there is every chance of loss of quantity by way of evaporation. Since in the present case, the transit loss is varying between 0.01% and 0.72% which is admissible in the facts and circumstances, credit cannot, be denied on the quantity involved in transit loss.

6) Mantri Developers Pvt. Ltd. Vs CCE. 2014-TIOL-1392-CESTAT-BANG

Facts: The appellant who is a developer of residential apartments, opted for payment of service tax and VAT as 'works contract'. Taking a view that the appellant is rendering residential complex construction service and the classification of service as works contract service adopted by them for payment of service tax is not correct, proceedings were initiated for recovery of service tax.

Held: Tribunal allowing the appeal held that the activity of new residential complex is clearly covered under the definition of works contract and therefore, the classification adopted by the assessee under works contract cannot be disputed. Further, the Tribunal placed reliance on the decision of the Supreme Court in the case of Larsen and Toubro Ltd. and another Vs. State of Karnataka and another - 2013-TIOL-46-SC-CT-LB and observed that the Apex Court also took the view that activities of construction of residential complex and transfer of individual flats after construction has to be treated as works contract for the purpose of levy of VAT.

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KSCAA WELCOMES NEW MEMBERS

SEPTEMBER 2014

	Name	*Place*
1.	Kapil Mittal	Bangalore
2.	V. Padmavathi	Bangalore
3.	Ginita Shah	Bangalore
4.	Sandesh Salankey	Bangalore
5.	Manjunath Bhat	Bangalore
6.	Narayan S.Bhat	Bangalore
7.	Hemanthkumar Shurpali	Bangalore
8.	Adarsha B.L.	Bangalore
9.	Smita Chetan Padaki	Dharwad
10.	Amit Someshwar Padaki	Bangalore
11.	Chetan Someshwar Padaki	Dharwad
12.	Praveen Shivanandappa Shettar	Haveri

ನಮ್ಮನ್ನಗಲಿದ
'ದಿವ್ಯ'
ಸಾಹಿತಿಗೆ
ಅನಂತ ಅನಂತ
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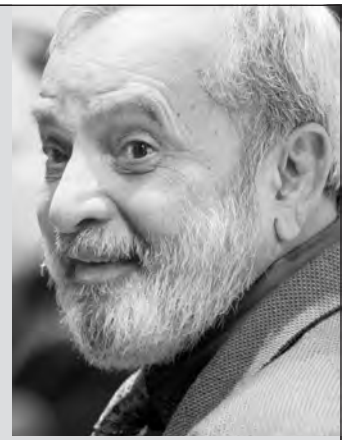

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6 Month Credit Restriction –Can Service Provider Avail post 1st September?

CA. Madhukar N. Hiregange and **CA. Roopa Nayak**

There was a shocker in this time's Finance(No.2)Act 2014 whereby it had imposed a restriction of time limit on availment of credits on eligible inputs and input services. It seems to be a case of adoption of worst practices of State VAT to put the brakes on availment of credits which is already restricted due to numerous exclusions in inputs and input services definition. In this article, the paper writers have sought to examine the implications of this restriction.

Background

The cenvat credit scheme is a beneficial scheme which was intended to avoid the cascading effect of taxes paid at each stage. The scheme applies to both the manufacturer of final products as well as the provider of output services. The assessee who is engaged in manufacture of excisable goods and provider of taxable services can avail the cenvat credit which can be set off against excise duty on final products or service tax on taxable services and pay only balance taxes in cash/cheque/e-payment.

The following basic requirements have to be fulfilled:

a. As long as the inputs and input services are used to manufacture excisable goods or used for providing taxable services, and

b. The specified credits were not restricted as per the inputs and input services definitions given in Cenvat Credit Rules, then credits on inputs and input services were eligible to be availed.

In the recent past there was no time bar on availment of cenvat credit anywhere in the statute books or in the rules. Earlier to 2004 there was such a restriction. Therefore the credits which were missed out to be availed for past 6-7 years could be availed at any time thereafter subject to proper supporting evidence of documents as set out in Rule 9 of Cenvat Credit Rules.

This ensured that there was no break in credits chain and all eligible credits were being availed [albeit with a time gap], wherever it had not been availed by assessee. Delayed credits were being taken in the following situations:

a. Case law overrules revenue contention on restriction to credit.

b. At the time of internal audit/ statutory audit where such issues of non availment of credits come up when reconciliations prepared.

c. No credit availed as used for non taxable manufacture/ services, now made taxable.

d. Pre-registration credits related to period earlier to taking excise/service tax registration by a manufacturer or service provider.

e. Credits missed to be availed related to exported goods/ exported services.

f. Credits not availed on the common inputs/input services used partially for manufacture of exempted goods and partly for excisable goods or partly used for exempted and taxable services.

g. Top management feeling that there is some credit missed to be availed on inputs and input services as proportion of duty being paid is more.

In this backdrop, we would analyse impact of the changeover to impose time limit for credits availment for assessees. We examine its impact under the following segments:

I. What is the Change & Impact of change?

II. What it may or may not cover?

III. Period Upto which past credit can be availed?

What is the Change & Impact?

In this Finance Act (2) 2014 we see an atrocious notification no 21/14-CE(NT) dt 11.7.14 whereby the second proviso to Rule 4(1) has been added as under:

(1) The cenvat credit in respect of inputs maybe taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service.

"provided that the manufacturer or provider of output service shall not take cenvat credit after 6 months of date of issue of any of the documents specified in sub rule (1) of rule 9."

- WEF 1st September 2014.

Similarly sixth proviso under Rule 4(7) for input services.

However capital goods credits have been spared as they are taken in installments.

Rule 9 (1) specifies the following documents- invoice by manufacturer, importer, depot, 1st stage, 2nd stage dealer, supplementary invoice, challan, bill of entry, certificate of appraiser and ISD document.

Impact of change

The major impact of the restriction could be as under:

I. Manufacturer/ service providers would automatically

lose out on eligible credits on inputs and input services not availed upto February 2014 as on 1 day of September 2014.

II. In future they need to ensure a completeness check is designed and confirm that credits are taken at periodic intervals- maybe a quarterly exercise.

III. In future if there are any demands for longer period- possibility of no credit being allowed need to be factored in. { hopefully this may see a favorable court decision in future}

What it may cover/ not cover?

Covers

- All input removals: Invoice (Excise), Supplementary Invoice, Bill of Entry, Ist& 2nd Stage dealers invoice, Importers/ depot invoices, Customers Invoice for returns/ rejects, Triplicate copy of Invoice (own for returns/ rejects), Courier BOE, Customs appraisers certificate, tax payment challan.
- All services – Invoice, bill,Supplementary Invoice, debit note, tax payment challan, proforma Invoice for advances (Service Tax), Input Service Distributor Invoice,

May Not Cover

- Rejected/ returned goods on which credit availed under Rule 16 of Central Excise Rules.
- Past Credits availed and reversed under protest due to oral/ written instructions from revenue officers.
- Re-credit of credit reversed for non receipt of inputs sent on job work.
- Re-credit of written off/ provision made inputs when put to use.
- Joint charge credit availed for which payment not made.

How to avail past credits?

The list of credits could be intimated to the revenue with an appropriate covering letter by way of personal delivery or by speed post before 1st September 2014. This would have been an ideal situation however as many assessees may have come to know of the impact of the law only in the last few days may not be practically possible. Considering the purpose of the cenvat credit scheme being beneficent scheme to avoid cascading effect of tax on tax, a sudden change could possibly allow a transitional delays which maybe considered by the revenue or by courts. Considering the intent as also the fact that now a days the credit is only availed in the returns the following 2 possibilities exist:

A. The manufacturer only paying excise duty may indicate the credits availed in the month of August as per returns where list of credits not separately sent earlier to 1st September 2014. This needs to be disclosed in returns being filed before due date.This may also be available for delayed returns.

B. The service provider may indicate the credits availed in August in that column while filing their return to be filed by 25th October 2014 or in the delayed return. It could also possibly be included in the revised ST-3 returns.

C. Where a manufacturer is also a service provider then 25th October return could include the inputs & input services used in services and the excise return for manufacture as per the current practice of the entity.

Immediately however a cenvat credit locating, capturing and availment is the need of the hour for service providers. Further availment of credits especially considering short time available could be done. Capture in Excise/Service tax returns and utilization done only once it is paid[for invoices raised till 1.4.11] and thereafter utilize once the invoices are paid within 3 months period.

Whether Credit for past which is not availed is now time barred forever?

As far as the credits which was eligible to have been availed but not availed till August has to be availed in the month of August though payment is not made within three months from the date of issue of invoice/bill/challan as the case may be.

It is relevant to note the decision of Hon'ble Supreme Court in the case of Osram Surya (P) Ltd vs CCE, Indore 2002 (142) E.L.T. 5 (S.C.), wherein it was examining the amendment to Rule 57G of the Central Excise Rules, 1944 introduced which also introduced time limit of six months of the issue of duty paying documents, held that the amended provisions would become applicable for credits availed after amendment even for the credits on inputs received prior to such amendment.

Applying the same all the pending documents on which credit is not availed till August 2014 could be taken in the month of August, if missed then in September 2014 to avoid any denial of credit on such documents.

Conclusion

The paper writers hope this article could provide a few days breathing time to the manufacturers and a couple of month for the service providers. It is also meant to be an eye opener for the industry as to possible credits which are commonly reversed on departmental instructions though there are supporting case laws which many of the officers need to follow- but chose not to.

For doubt please host on

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State of Karnataka v. Centum Industries, STRP Nos. 294 & 210 of 2013

Order dated July 31. 2014.

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Practicing Advocate

Background

The assessee, Centum Industries, Pvt. Ltd., purchased certain goods in June 2006, and paid tax amounting to Rs, 2,43,306 to the selling dealer. In its returns filed under the Karnataka Value Added Tax Act, 2003 ("KVAT Act") for the tax period June 2006,the assessee did not claim credit of the input tax paid by it to the seller. Instead, the assessee claimed the input tax credit in its returns filed for the month of February 2007.

The assessing authority rejected the assessee's claim on the ground that the assessee ought to have claimed credit in its returns filed for the month in which the purchases were made. In other words, the authority held that since the assessee did not claim input tax in the month in which the purchases were effected, namely, June 2006, the claim of rebate in its returns filed for a different month cannot be allowed. The first appellate authority affirmed the order of the assessing authority.

The Karnataka Appellate Tribunal ("KAT") set aside the orders of the first appellate and assessing authorities, holding that "input tax is a statutory promise made to the dealer buying the goods from the registered dealer by paying the tax mentioned in the tax invoice." The KAT concluded by holding that, "there is nothing in the law stipulating that if input tax is not claimed during the month succeeding the month in which purchase is effected, the dealer would forfeit the claim to input tax."

The State filed a revision petition against the order of the KAT. In essence, the argument of the State was that a dealer must claim input tax credit in its returns filed for the month in which the purchases were made, and if there is any failure to do so, the credit would be forfeited unless a revised return for the same tax period was filed within the time period prescribed under Section 35(4), that is, six months from the end of the relevant tax period.

High Court's Findings.

The question of law framed for the Hon'ble High Court's consideration was: "Whether the assessee is entitled to claim input tax rebate beyond the period of 6 months in a return filed for the said period on the ground that he has omitted to put forth the claim in the return filed for the relevant period?"

First, the court referred to Section 10(3) of the Act, which reads as follows:

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

The court observed that, "it is clear the words 'in that period' specifies the period during which input tax is paid and output tax is payable and the same has to be accounted in accordance with the provisions of the Act." The court, in effect, held that Section 10(3) requires a dealer to account for its input tax credit entitlement in the same tax period in which the input tax was paid.

Thereafter, the court, relying on Section 35(4) of the Act, observed that if there is any omission or incorrect statement in the return filed, a revised return must be filed within the prescribed tax period of 6 months. Pertinently, the court observed that "if the returns are not filed within the said period, then the assessee would not be entitled to the benefit of setting off output tax against input tax." In short, the court held that if input tax credit is not claimed in the returns filed for any tax period, the Act allows a period of six months' time to file revised returns and claim the credit.

As the assessee in this case had not filed a revised return for June 2006 within the prescribed time-period of six months, but had claimed the input tax credit in its return for February 2007, the court held that the assessing authority was right in disallowing the credit claimed. The court observed that the Tribunal has not applied its mind in holding that there is nothing in law stipulating that prohibits a dealer from claiming input tax credit in any month after the purchase was effected. More specifically, the court observed that:

"The Tribunal has not applied its mind to sub-section (3) of Section 10 which is the provision which determines the net tax payable by a registered dealer in respect of each tax period in arriving at tax liability the amount of output tax payable by the assessee in that period less the input tax deductible by him as may be prescribed in that period and accounted for in accordance with the provisions of the Act. If the assessee is not putting forth a claim for input

tax deduction in the return filed in June 2006 nor has he put forth such a claim in a revised claim which he could have filed within 6 months there from his right to claim input tax deduction is lost. He cannot for the first time in the returns filed in February 2007 put forth a claim for input tax deduction as the said return was not related to the tax period in which the input tax was paid."

Accordingly, the High Court set aside the order of the KAT and answered the question of law in favour of the State.

Comments

This judgment is bound to have far-reaching implications for the trade and industry in the State in two crucial respects. First, the judgment directs that dealers would have to either: (1) avail credit in the month in which the purchases were made; or (2) file a revised return for the tax period in which the purchases were made within the time-period prescribed under Section 35(4). According to the judgment, dealers who, for whatever reason, fail to avail the credit in the return filed for the month in which the purchases were made, and do not revise their return for the month within six months from the end of the relevant tax period stand to forfeit the credit.

Second, the judgment also states that no returns can be revised after the period specified under Section 35(4), that is, six months from the end of the relevant tax period. in a number of cases, including those unrelated to the availing of input tax credit, authorities have denied various benefits that dealers are legally entitled to on the ground that the dealers did not claim the benefit in the original returns, and subsequently failed to revise the return within the time-period prescribed under Section 35(4). This judgment provides support to such orders as the court has observed, although not in express terms, that Section 35(4) is mandatory, and that there can be no exceptions to the requirement that returns must be revised within a period of six months from the end of the relevant tax period.

In my opinion,the law laid down in the judgment may have to be revisited by the court as certain very important issues were not raised and, therefore, the court did not have an occasion to examine them.

First, under Section 38(1)(b), if any return filed by a dealer appears to be incorrect or incomplete, the prescribed authority may proceed to assess the dealer to the "best of its judgment." Under Section 39(1), where the prescribed authority has reasons to believe that any return furnished by an assessee understates the correct tax liability, the authority may reassess the dealer to the "best of its judgment." Therefore, in both cases, the Act imposes an obligation on the authority to assess a dealer to the best of its judgment. It is settled law that in assessing a dealer to the best of its judgment, "the duty of the assessing officers is not merely to impose tax that is lawfully exigible but also to give to the assessees the benefit of any reduction or exemption that may become due to them upon facts actually found to be true by the assessing authorities, whether or not the assessees, out of ignorance or by mistake, make a claim thereto." Girdharlal Parasmal v. State of Mysore, (1967) 20 STC 64, 66 (Mys). Therefore, even if a dealer inadvertently fails to claim input tax credit, or declares tax at a higher rate than that actually applicable, it is the duty of the assessing authority to give the assessee the benefit that is legally due to it. However, according to the judgment in Centum Industries, any benefit that is legally due to an assessee will be lost forever if the assessee fails to claim the benefit, either in the original return or in a revised return filed within six months from the end of the tax period. The argument that the assessing authority must, nevertheless, assess the dealer to the best of its judgment and, in the process, accord any benefit that is legally due to the assessee was not urged before the Hon'ble High Court.

Second, Section 35(4) states, in pertinent part, that a revised return must be filed within the prescribed tax period "if any dealer having furnished a return under this Act, […] discovers any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority[.]" Therefore, although the wording of the provision is ambiguous, it appears that the time-period prescribed is not applicable in cases where the omission or incorrect statement has been discovered as a result of an inspection or receipt of information by the prescribed authority. In short, it appears that if any information is discovered by an inspection or otherwise, there is no time limit prescribed for filing revised returns. On the other hand, if the dealer discovers the error himself, then, according to the judgment in Centum Industries, he has only six months to rectify the error. This could not, possibly, have been the intention of the legislature.

Third, under Rule 39 of the KVAT Rules, "where any return submitted is apparently incomplete or incorrect, the jurisdictional Local VAT Officer or VAT sub-officer shall issue a notice in Form VAT 150 requiring the dealer to submit a complete or correct return within ten days of issue of the notice." Crucially, the Rule does not prescribe any time-period within which the officer shall issue such a notice. Therefore, a dealer may be called upon to submit a revised return by the jurisdictional LVO or VSO after six months, as well. Here again, it could not have been the intention of the legislature to prescribe a strict time period for dealers who voluntarily wish to revise their returns, but provide an extended time period in cases where the LVO or VSO discovers any mistake. The Hon'ble High Court of Karnataka has considered this aspect of the matter in Wipro Ltd. v. State of Karnataka, W.P No. 55411/2013 (Order

dated 6/12/2013). In the said case, the monthly returns filed during the years 2007-08 and 2009-10 were incomplete as certain turnovers pertaining to interstate purchases and stock transfers were not declared in them. On November 8, 2013, the assessee requested that the authority accept certain C and F Forms that pertained to the transaction that were not initially declared. When the assessing authority refused to accept the forms, the assessee filed a writ petition before the High Court. The court examined Rules 38 and 39 and observed, in essence, that when an incorrect or incomplete return is filed, a notice in Form VAT 150 must be issued to the dealer calling upon him to file the correct monthly returns. It is interesting to note that in Wipro's case, the assessee was permitted to file revised returns long after the expiry of six months from the end of the relevant tax periods. Although, the Order in Wipro is by a Single Judge, it would certainly have been useful if the Division Bench in Centum Industries had been apprised of the said Order.

Fourth, the scheme of the Act does not in anyway require a dealer to avail credit in the same month in which the input tax was paid. In fact, the only restriction placed by the Act insofar as the timing of availment is with regard to capital goods where credit can only be availed after commencement of commercial production. Other than this one exception, the Act does not specify when input tax credit must be claimed by a dealer. On the other hand, as the primary intention and scheme of the Act is to avoid the cascading effect of taxes, and the consequent escalation in the prices of goods, dealers must freely be permitted to avail input tax credit. If technical and legal nuances are permitted to interfere with the overarching scheme of the Act, it is the end consumer who will eventually suffer and, quite literally, pay the price for it, as dealers will be forced to pass on the burden of any lost input tax credit. Moreover, Section 10(3) of the Act merely refers to the manner in which net tax is to be calculated. The provision does not specify when the dealer must avail its input tax credit. As stated earlier, Section 10(3) specifies that the net tax liability of a dealer during a particular tax period is the amount of output tax payable by him "in that period" less the input tax deductible by him as may be prescribed "in that period." In other words, in order to calculate the net tax payable by a dealer, the output tax payable by the dealer in that period must be reduced by the "input tax deductible by him" in that period. It is crucial to note that the Section does not state that the input tax paid by him in that period must be deducted. The input tax "deductible" cannot be interpreted to mean, the input tax paid by the dealer during that period. Therefore, the section must be interpreted to mean that the input tax credit claimed/declared by the dealer in that period must be deducted from the output tax in order to arrive at the net tax liability. Here again, the court in Centum Industries did not have any occasion to examine this aspect of the matter.

Fifth, Section 31(4) requires dealers with a turnover in excess of Rs. 1 crore to have their accounts audited by a Chartered Accountant, and submit to the prescribed authority a copy of the audited statement of accounts in Form VAT 240. The prescribed Form VAT 240 must be be submitted within nine months from the end of the financial year, that is, December 31. In many cases, while preparing the audited statements of accounts, dealers discover omissions or mistakes in the returns filed by them earlier. However, in almost all cases, as more than six months have elapsed since the end of the relevant tax periods, a strict reading of Section 35(4) would prohibit dealers from filing revised returns and correcting the errors made by them. It is, therefore, arguable that Section 35(4) must be read liberally to allow dealers to rectify any errors committed by them in their returns even though more than six months have elapsed since the end of the tax period.

Conclusion

The High Court's judgment in Centum Industries' case is cause for much concern across the trade and industry, and is a double-whammy for dealers across the State. As a result of the judgment, dealers must be vigilant and ensure that any input tax credit is availed in a timely manner. Even on issues other than the availing of input tax credit, dealers must be careful to ensure that they rectify any mistakes in their original returns within a period of six months from the end of the relevant tax period.

In this article, I have indicated only a few issues, which the court did not have the occasion to examine in Centum Industries. If these issues, among others, had been raised at an appropriate stage of the case, it is possible that the High Court would have reached a different conclusion. However, this is only conjecture and, hopefully, the court will have an occasion to consider the issue once again, and this time, on a more holistic basis.

As a final matter, it is pertinent to note that the High Court's Order in Infinite Builders, (STA No. 59/2009), has been challenged before the Hon'ble Supreme Court of India (SLP (C) No. 24747/2013). The High Court had held that the assessee was not entitled to avail input tax credit because it had not claimed it in its original returns, and had later failed to revise its returns within six months. On August 8, 2013, the Apex Court issued notice on the assessee's prayer for interim relief as well as on the special leave petition. The case is currently pending consideration.

Therefore, the last word on this vexed issue is, undoubtedly, yet to be uttered. In the meanwhile, there is bound to be confusion among the dealers as well as the Department.

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Brief Note On Company Law Settlement Scheme 2014

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INTRODUCTION:

The Ministry of Corporate Affairs has introduced a scheme known as Company Law Settlement Scheme, 2014 (CLSS-2014) where companies who have defaulted in making annual statutory filings with the Registrar of Companies can file belated documents with additional fees of 25% of the actual additional fee payable on the date of filing of each belated document as per section 403 read with Companies (Registration Offices and Fee) Rules, 2014.

The scheme offers to condone the delay in filing annual statutory documents with the ROC and grant immunity for prosecution in respect of such delayed filings. Under the Scheme, companies are permitted to file annual statutory documents that were due for filling until June 30, 2014.

In order to give such an opportunity to the defaulting companies to enable them to make their default good by filing these belated documents, the Central Government in exercise of powers conferred under section 403 and 460 of the Companies Act, 2013 has decided to introduce a Scheme namely "Company Law Settlement Scheme 2014″ [CLSS-2014] condoning the delay in filing of documents with the ROC, granting immunity for prosecution and the defaulting company shall pay statutory filing fees as prescribed under the Companies (Registration Offices and fee) Rules, 2014 along with additional fees of 25% of the actual additional fee payable on the date of filing of each belated document as per section 403 read with Companies (Registration Offices and Fee) Rules, 2014.

The e-Form CLSS-2014 for making filings under the Scheme was made available from 1st September, 2014. The Scheme will remain in force up to October 15, 2014 and defaulting companies will have an opportunity to file their delayed filings until that date.

The intention of the MCA in introducing this scheme as per the notification F. No. 02/13/2014 CL-V dated 12.08.2014 :

- Annual documents are considered very important in context of an up-to-date Registry, it is observed that a large percentage of companies have not filed their statutory documents making them liable for penalties and prosecution for such non-compliance.
- The Companies Act, 2013 lays down a stricter regime for the defaulting companies with higher additional fees.
- The quantum of punishment has been enhanced under the above mentioned provisions of the Act vis-a-vis the earlier Act i.e. Companies Act, 1956.
- A specific provision for enhanced fine in case of repeated default also been included in the form of section 451 of the Act. Additionally, the provisions of section 164(2) of the Act, inter alia, providing for disqualification of directors in case a company has not filed financial statements or annual returns for any continuous period of three financial years has been extended to all companies.
- The Ministry has received representations from various stakeholders requesting for grant of transitional period/one-time opportunity to enable them to file their pending annual documents to avoid attraction of higher fees/fine and other penal action, especially disqualification of their Director prescribed under the new provisions of the Act.

HIGHLIGHTS OF THE SCHEME

- ✓ Delay in filing the documents with ROC is condoned
- ✓ 75% of the additional fee is waived, meaning thereby the company will pay only the 25% of the actual additional fee (substantial saving of additional fee)
- ✓ The companies will get immunity from prosecution.

SALIENT FEATURES OF THE SCHEME

The salient features of the Scheme are as under:

Applicable to: Any "defaulting company" is permitted to file belated documents which were due for filing till 30th June 2014 in accordance with the provisions of this Scheme.

Payment of fees and additional fees: The defaulting company shall pay statutory filing fees as prescribed under the Companies (Registration Offices and fee) Rules, 2014 along with additional fees of 25% of the actual additional fee payable on the date of filing of each belated document as per section 403 read with Companies (Registration Offices and Fee) Rules, 2014.

Withdrawal of appeal against prosecution launched for the offences: If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Companies Act, 1956 and/or Companies Act, 2013 in respect of which application is made under this scheme, the applicant shall before filing an application for issue of Immunity certificate, withdraw the appeal and furnish proof of such withdrawal along with the application.

Application for issue of immunity: The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the e-Form CLSS-2014 annexed, after the document(s) are taken on file or on record at approved by the Registrar of Companies as the case may be.

The e-Form for filing application to obtain such a certificate will be available on the MCA21 portal from 1st September, 2014 and may be filed thereafter but not later than three months from the date of closure of the Scheme. There shall not be any fee payable on this Form.

Provided that this immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of

management disputes of the company pending before the court of law or tribunal.

Order granting immunity from the penalty/prosecution: The designated authority shall consider the application and upon being satisfied shall grant the immunity certificate in respect of documents filed under this Scheme.

Scheme applicable to :

a. **Form 20B** – Form for filing annual return by a company having share capital.

b. **Form 21A** - Particulars of Annual return for the company not having share capital.

c. **Form 23AC, 23ACA, 23AC-XBRL and 23ACA-XBRL –** Forms for filing Balance Sheet and Profit & Loss account.

d. **Form 66 –** Form for submission of Compliance Certificate with the Registrar.

e. **Form 23B –** Form for Intimation for Appointment of Auditors.

Withdrawal of prosecution : After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s).

APPLICABILITY OF COMPANY LAW SETTLEMENT SCHEME, 2014

Applicability: This newly launched CLSS 2014 is applicable to all the defaulting Companies registered under Companies Act, 1956 except few companies as listed below.

NON-APPLICABILITY COMPANY LAW SETTLEMENT SCHEME, 2014

This newly launched CLSS 2014 shall not apply to the following Companies:

a. Company against which action for striking off the name under sub-section (5) of section 560 of Companies Act, 1956 has already been initiated by the Registrar of Companies; or

b. Where application has already been filed by the Company for striking off the name with the registrar of Companies; or

c. Where application has been filed for obtaining dormant status under section 455 of the Companies Act 2013; or

d. Vanishing Companies, entities which have already applied for striking off their names from the Register of Companies and those which have sought dormant status, would not be eligible for the scheme

WHAT ARE THE ADVANTAGES OF COMPANY LAW SETTLEMENT SCHEME 2014-[CLSS - 2014]

- Waiver of additional fees: Defaulting companies can file their belated documents by paying only 25% of the actual additional fees payable on the date of filing. There is a waiver of 75% of Additional Fees by the MCA in favour of stakeholders.
- Defaulting companies can file application for getting immunity from Penalty and Prosecution.
- An opportunity for defaulting companies to file belated documents.
- Companies can obtain immunity against any prosecution pending against with reference to delayed or non-filing of forms or returns.
- Once the ROC issue the immunity certificate he has to withdraw all the prosecution pending before the all the courts.
- The defaulting inactive companies can apply to get themselves declared as dormant company under the scheme. This is one of the crucial benefits of this scheme.
- Section 164(2), providing disqualification of a director in case a company has not filed financial statement or annual return for any continuous period of 3 financial years, shall not be applicable, if the company made its default good by filing belated documents under CLSS 2014. In this way CLSS 2014 protects Directors from Disqualification. In other words, if a defaulting company file all belated documents under this scheme, the disqualification under section 162(2)(a) shall apply only for the future defaults, if any, by such company.

HOW TO GET IMMUNITY CERTIFICATE

The prescribed e-form for application for issue of immunity certificate under the Company Law Settlement Scheme (CLSS), 2014 (which do not have any number) but nomenclatured as application for issue of Immunity Certificate under CLSS Scheme 2014 which is to filed pursuant to Company Law Settlement Scheme (CLSS), 2014.

Before the application for immunity is filed, the company should withdraw any appeal or compliant before the court for violation of the any of the provisions of the Act and should furnish the proof of self withdrawal. Application should be made in the prescribed form electronically after the closure of the scheme and after the documents are taken on file or registered or approved by the ROC. Application for immunity should be made within Three months from the date of closure of this scheme. ROC once satisfied with the submitted documents shall grant the immunity certificate. Once the immunity certificate is granted, the Registrar will withdraw the prosecution pending the any before any concerned courts.

The scheme will be in force from 1st September, 2014 to October 15, 2014. The scheme is unique in nature with simple formalities and substantial reduction in additional fee and should benefit the defaulted companies to make good their default and get solace form prosecution and also save substantial filing fees.

Provided that this immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of management disputes of the company pending before the court of law or tribunal.

ACTION AGAINST CONTINUING DEFAULTING COMPANIES

At the conclusion of this scheme, ROC shall take necessary action under the Companies Act, 1956 or Companies Act, 2013, against the Companies who have not availed this scheme and are in default in filing these documents in a timely manner.

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Photo Gallery

Workshop on Practical Problems & Solutions in Filing VAT 100 & ST 3 Returns






EC Meeting & Mentors Meet



Workshop on Recent Changes in Indirect Taxes jointly held with FKCCI



Workshop on e-TDS Returns, Practical Challenges and Changes in Tax Audit Reports




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Karnataka State Chartered Accountants Association (R)

Upholding the Moral & Professional Excellence

ONE DAY SEMINAR ON

TAX IMPLICATIONS ON REAL ESTATE SECTOR

on **11th October 2014**

at **'Edinburgh Hall'**

Hotel Fortune Park JP Celestial
5/43, Race Course Road
Anand Rao Circle, Bangalore

CPE 6 Hours* Unstructured

Programme

Time	Details
08.45 AM	Registration
09.15 AM	Inaugural session
09.30 AM	FIRST TECHNICAL SESSION **Service Tax Implications On Real Estate Sector** **CA. Raghuraman,** B.Com, FCA, LLB *Advocate, Bangalore*
11.00 AM	TEA BREAK
11.15 AM	SECOND TECHNICAL SESSION **Direct Tax Implications On Real Estate Sector** **CA. K.K. Chythanya,** B.Com, FCA, LLB *Advocate, Bangalore*
01.00 PM	QUESTION & ANSWERS
01.30 PM	LUNCH BREAK
02.30 PM	THIRD TECHNICAL SESSION **Joint Development Agreement-related Issues & Drafting** **Sri Arvind Raghavan,** B.Com, LLB *Advocate, Bangalore*
3.45 PM	TEA BREAK
4.00 PM	FOURTH TECHNICAL SESSION **KVAT Implications On Real Estate Sector** **CA. Sanjay Dhariwal,** B.Com, FCA, LLB
5.30 PM	QUESTION & ANSWERS

DELEGATE FEES

₹ 1200/- for CA's

₹ 1500/- for others

(Inclusive of applicable taxes)

The Fee covers Delegate Kit, Background Material, Lunch & Coffee/Tea.

NOTE : CHEQUES / DD's may be made in favour of KSCAA, payable at Bangalore. Please write your name and contact number overleaf the cheque/DD.

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REGISTRATION LIMITED TO : 300 Delegates **PLEASE REGISTER IN ADVANCE**

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