KSCAA NEWS BULLETIN

2014 - 15 Embodiment of Virtues

Upholding the Moral & Professional Excellence

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BASAVANAGUDI CPE STUDY CIRCLE

CPE workshop on

PRACTICAL PROBLEMS IN FILING COMPANY FORMS –ADT1 AND MGT14

on Saturday, 22.11.2014
4.00 PM to 6.00 PM

CPE 2 Hrs

CPE workshop on

PRACTICAL PROBLEMS & SOLUTIONS IN VAT AUDIT AND INPUT CREDIT

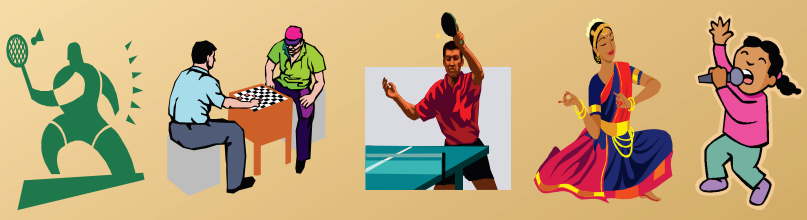
on Saturday, 13.12.2014
4.00 PM to 8.00 PM

CPE 4 Hrs

Details Inside

CRICKET LEAGUE

14th December, 2014
Sunday



SPORTS AND TALENT MEET

21st December 2014
Sunday

From the President

ದುಡಿ, ಮೈ ಮುರಿದು ದುಡಿ.
ಹೆಚ್ಚು ಹೆಚ್ಚಾಗಿ ದುಡಿ.
ಆ ನಿನ್ನ ದುಡಿಮೆಯಲ್ಲಿ ಕ್ರಮವಿರಲಿ,
ನಿಯಮವಿರಲಿ, ಗುರಿ ಇರಲಿ,
ವಿವೇಚನೆ ಇರಲಿ, ದಕ್ಷತೆ ಇರಲಿ.

– ಸರ್. ಎಂ. ವಿಶ್ವೇಶ್ವರಯ್ಯ

Dear Professional Colleagues,

The Adjourned 41st AGM of KSCAA was held on 18th October, 2014 to transact the adjourned agendas of the AGM held on 15th July 2014. The present executive committee presented the updated reports which were approved by the members present. The members present expressed their displeasure on the absence of immediate Past President at the adjourned AGM. We wholeheartedly thank the Past Presidents and other members of our association for their support in concluding the AGM and also for their words of appreciation to the present Executive Committee towards the steps taken to resolve the issues leading to the adjournment of 41st AGM. I take this opportunity to assure all our members that the suggestions given by our Past Presidents and members present at the adjourned AGM will be duly considered and implemented to take forward our Association in the path of prosperity.

On behalf of KSCAA, I express my warmest congratulations to CA.Suresh Prabhakar Prabhu on his appointment as Minister of Railways in the Prime Minister Narendra Modi's reshuffled cabinet. Though we miss our very own MP from Karnataka Sri. Sadananda Gowda at the Rail Bhawan, we wish him the very best for his new role as Minister of Law and Justice.

The Government's bid to implement the Goods & Services Tax (GST) as early as possible got a significant boost with the empowered committee of state finance ministers endorsing the 'place of supply' rules that form the backbone of the new regime that will replace a plethora of levies, create a common market and likely to give GDP growth a lift of up to two percentage points. The states are also confident GST will be in place by April 1, 2016, six years after it was originally scheduled to take effect. GST will subsume central indirect taxes such as excise duty and service tax at the central level and value added tax at the state level besides other local levies such as Octroi and entry tax. We wish to see the GST act implemented at the earliest, which would improve the economy and business environment in the country.

Karnataka Cities Renamed: The Union Home Ministry has given the green-light to a long-standing proposal of the Karnataka Government to rename a dozen cities and towns in the state in consonance with their pronunciation in Kannada language. The State Government issued a special gazette notification to bring the new names into effect. Twelve cities in Karnataka woke up to new names on Saturday, 1st November 2014, which is also the 59th Karnataka Rajyotsava. Now, Bangalore will be called Bengaluru, Mangalore will be called Mangaluru, Bellary will be called Ballari, Belgaum will be called Belagavi, Hubli has become Hubballi, Tumkur is Tumakuru, Bijapur has changed to Vijayapura, Chikmagalur to Chikkamagaluru, Gulbarga to Kalaburagi, Hospet to Hosapete, Mysore to Mysuru and Shimoga will now be known as Shivamogga. I request ICAI representatives to make necessary follow-ups to change the Branch names in Karnataka accordingly.

Executive Committee has co-opted CA. Malakajappa R Biradar from Kalaburagi to represent Moffusil area for the year 2014-15. We welcome him to the KSCAA EC and with his Co-option, KSCAA Executive Committee will now work with its full strength of 15 members and look forward to conduct more events and programs in the days ahead.

Basavanagudi CPE Study Circle has come forward to hold their CPE programme on Saturday, 22nd November 2014 at KSCAA premises. Further one more CPE programme has been arranged by them on 13th December 2014 at Sri Bhagwan Mahaveer Jain College. The detail of the programme is given in the advertisement published in this Bulletin.

KSCAA, jointly with Bangalore Branch of SIRC of ICAI, is organising a **Cricket Tournament** for members on 14th December 2014 and **Sports and Talent Meet** for members and family on 21st December, 2014. The details are provided elsewhere in this news bulletin. We invite all members to participate with their family and enjoy the events.

The mega event of KSCAA – 27th Annual Conference is proposed to be held on 7th and 8th of March, 2015. I request all the members to make note of this event in their calendar. I also request the Managing Committee of various ICAI branches in Karnataka and also various district Chartered Accountants associations to not to plan any events or programs on those dates and join hands in making the conference a grand success.

To encourage and increase the KSCAA membership, we are planning to start ***Membership Drive*** on every 3rd Saturday of the month. We request the members to encourage the other ICAI members in the state to be part of KSCAA.

In service of the Profession,

CA. Raveendra S. Kore
President

41st Adjourned Annual General Meeting

Co-opted EC Member
for the year 2014-15

CA. Malakajappa R. Biradar
Kalaburagi

KSCAA
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CONTENTS

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

email: info@kscaa.co.in

Website: www.kscaa.co.in

Money Trail - Subsidiary Companies

CA. S. Krishnaswamy

An area that has evoked concern in the Companies Act,2013 is diversion of funds by a company through the medium of layers of subsidiaries with loss of money trail . The companies Act, makes it compulsory for all listed and unlisted companies to prepare consolidated financial statements, where they have one or more subsidiaries. These would be in addition to the separate financial statements that are required to be prepared in the same form and manner as the separate financial statements. For the purpose of this requirement, the word subsidiary would include associate companies and joint ventures.

The definition of subsidiary companies is now expanded, and also restrictions placed in S.186,187 and 188 bring out the regulatory discipline imposed on investment of funds. Companies have acted responsibly and some irresponsibly.

Responsibly

Subsidiaries are created to serve several business needs ranging from corporate structuring, developing new products and services, regulatory compliance, tax efficiencies and mergers and acquisitions, to expanding into new geographical markets. As companies grow in size and diversify their operations in the domestic market or expand to overseas markets, the number of subsidiaries tends to increase and the structures of the companies become more complex.

Irresponsibly (unethically)

Irresponsibly when the subsidiaries are created to divert funds for other objects, depleting parent's cash resources, and ultimately leave no trace of the funds (Investment in subsidiary written off). It is for this reason that the Parliamentary Standing Committee on Finance, which examined the bill, wanted stringent provisions to monitor dealing among group companies and subsidiaries. It is the committee's consideration view that the mechanism of inter-corporate loans / investments and resultant transfer of funds to subsidiaries etc. should remain only an instruments of corporate growth, rather than a method for diversion of funds from a healthy enterprise, the Yashwant Sinha-headed panel said . SEBI directed how the Board must be constituted in clause 49 in Listing Agreement and certain disclosure to be made on oversight of subsidiary.

Companies Act, 2013

Section 2(87)- Definitions -

Section. 186: Loan and Investment by Company

Section 188: Related party transactions

DEFINITION

As per Section 2 (87) of Companies Act, 2013, Subsidiary company means a company in which the holding company

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

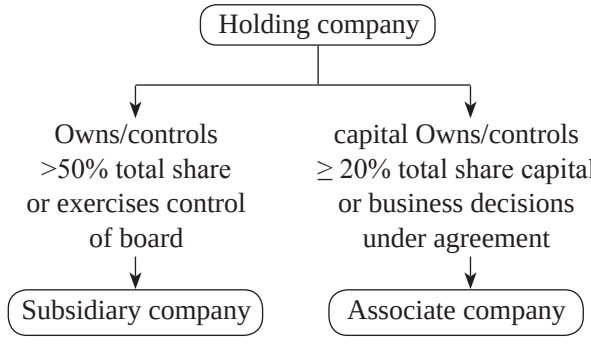
Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Comments

The definition of a subsidiary is based on ownership of the total share capital which includes preference share capital. This will have a significant impact on several companies which have issued preference shares. Also this definition does not consider the concept of control over voting power.

New definition of Subsidiary, Associate, Joint Venture Company [sections 2(6) and 2(87)]

The definitions of the terms 'subsidiary' and 'associates' provided under the 2013 Act are inconsistent with the definitions provided under the accounting standards notified under the Accounting Standards Rules.



Subsidiary

As per the 2013 Act, a 'subsidiary' is as an entity of which the holding company controls more than one-half of the total share capital (either directly or indirectly) or controls composition of the board of directors.

Control includes right to appoint majority of the directors (or to control the management or policy decisions, individually or in concert, directly or indirectly); In contrast,

Associate

The 2013 Act defines an 'associate' as a company in which that other company has a 'significant influence', but which

is not a subsidiary company of the company having such influence and includes a joint venture company.

'Significant influence' means control of at least twenty percent of total share capital, or of business decisions under an agreement.

Subsidiary Governance under the Clause 49 of the Listing Agreement:

Under sub-clause V of the Clause 49:

i. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non listed Indian subsidiary company.

The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

Explanation (i): The term "material non-listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose turnover or net worth (i.e. paid up capital and free reserves) in the preceding accounting year exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

Explanation (ii): The term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Explanation (iii): Where a listed holding company has a listed subsidiary company, which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.

Section 186 : Loan and Investment by Company

SCOPE

The company can make investment in not more than two layers of **investment companies** provided the provisions shall not affect -

(i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;

(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

RESTRICTION

No company shall directly or indirectly —

(a) give any loan to any person/ other body corporate;

(b) give any guarantee/ provide security in connection with a loan to any other body corporate

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding higher of

(i) 60% of its paid-up share capital, free reserves and securities premium account or

(ii) 100%of its free reserves and securities premium account

In case of contravention of the above, prior approval by means of a special resolution shall be passed at a general meeting.

The company shall not invest/give loan/guarantee/ security unless –

(a) the resolution passed at a meeting of the Board with the consent of all the directors

(b) prior approval of the public financial institution concerned where any term loan is subsisting, provided there is no default in repayment of loan instalments / payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

The company registered u/s 12 of SEBI Act, 1992 shall not take inter-corporate loan / deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

No loan shall be provided at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

DISCLOSURE IN FINANCIAL STATEMENTS

Every company has to maintain register containing particulars of loan/guarantee/security provided.

The company shall disclose in the financial statements the full particulars of –

(a) loans given, investment made or guarantee given / security provided

(b) the purpose for which the loan / guarantee / security is proposed to be utilised by the recipient of the loan / guarantee / security.

PENAL PROVISIONS

In the event of contravention, the company shall be punishable with –

(a) Fine of more than Rs. 25,000/- but may extend to Rs. 5,00,000/-

(b) Every officer in default shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall be more than Rs. 25,000/- but which may extend to Rs. 1,00,000/-

Section 188 : Related Party Transactions

SCOPE

With the consent of the Board of Directors given by a resolution at a meeting of the Board the company shall

enter into any contract or arrangement with a related party with respect to—

(a) Sale, purchase or supply of any goods or materials;

(b) Selling or otherwise disposing of, or buying, property of any kind;

(c) Leasing of property of any kind;

(d) Availing or rendering of any services;

(e) Appointment of any agent for purchase or sale of goods, materials, services or property;

(f) Such related party's appointment to any office or place of profit in the company,

(g) Underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that –

(i) The a company having a paid-up share capital of more than such amount or transactions not exceeding such amounts shall not enter into contract or arrangement except with the prior approval of the company by a special resolution:

(ii) The member of the company cannot vote on such special resolution of such member is a related party

(iii) It applies to transactions entered in its ordinary course of business, which are on arms' length basis

CONTRAVENTION

i. The contract or arrangement shall be voidable at the option of the Board if –

(a) entered by a director or any other employee without obtaining the consent of the Board or approval by a special resolution in the general meeting

(b) if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into

ii. If the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

PENAL PROVISIONS

In contravention of the provisions, the company shall recover any loss sustained by it as a result of such contract or arrangement, entered by a director or any other employee.

Any director or any other employee of a company, who had entered into the contract /arrangement in violation of the provisions of this section shall —

(i) in case of listed company, be punishable with imprisonment for a term which may extend to 1 year or with fine which shall be more than Rs.25,000/- but which may extend to Rs.5,00,000/-, or with both; and

(ii) in case of any other company, be punishable with fine which shall be more than Rs. 25,000/- but which may extend to Rs. 5,00,000/-.

AGENDA OF AUDIT COMMITTEE

Section 177 of Companies Act, 2013, provides for Audit Committee to act in accordance with the terms of reference specified in writing by the board which shall include –

(a) Approval or any subsequent modification of transactions of the company with related parties

(b) Scrutiny of inter-corporate loans and investments

(c) Monitoring the end use of funds raised through public offers and related matters

Bank Loans subsidiary ;

S.185 of the companies Act,2013 deals with giving corporate guarantee by the flagship or holding or parent company for providing loans to its smaller or its subsidiary companies, Banks have interpreted the section 185 as placing an embargo.

Author can be reached on
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KSCAA WELCOMES NEW MEMBERS - NOVEMBER 2014

	Name	*Place*		*Name*	*Place*
1	Nagabhushan T.R.	Bengaluru	10	Sanjay Kumar Bhuwanja	Bengaluru
2	Subhas Trappa Sangannavar	Jamkhandi	11	Kishori S.Patil	Bengaluru
3	Deepak B. Asopa	Bengaluru	12	Sandhya P. Nagar	Bengaluru
4	Jnaneshwara Kashyap	Bengaluru	13	Sachin Chavan	Belgaum
5	Chikkerur Chidambar Ramrao	Bengaluru	14	Beeram Sivasankar Reddy	Bengaluru
6	Basavaraj C.Kusoogalla	Bengaluru	15	Subrahmanya Hegde	Bengaluru
7	Pavan Kumar R.S	Bengaluru	16	Jayant Devappa Hegde	Bengaluru
8	Ankit Chaudhary	Bengaluru	17	Narasimha Rao P	Bengaluru
9	Vishwanath B. Gamanagatti	Bengaluru	18	Ashwini S.Hegde	Bengaluru

INDIRECT TAXES UPDATE – OCT. 2014

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

FOR THE MONTH OF OCTOBER 2014:

A. Notifications and Circulars

a) Circulars

i) Clarifications relating to payment of place of removal for availment of credit:

Consequent to insertion of definition of phrase 'place of removal' in the Cenvat Credit Rules,2004, CBEC has issued clarifications that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

[Source: Circular No 988/12/2014-CX dt. 20.10.2014]

ii) service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through MTSOs-

Clarifications as issued by CBEC relating to services of agents in India who provide agency /representation service to foreign money transfer service operator (MTSO). The clarifications are as below:

Sl. No.	Issues	Clarification
1	Whether service tax is payable on remittance received in India from abroad?	No service tax is payable per se on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994.
2	Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer,facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.
3	Whether service tax is leviable on the service provided, as mentioned in point 2 above, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax. The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
4.	Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/ agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent	Yes. As the service is provided by Indian bank/entity/agent/ sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.

Sl. No.	Issues	Clarification
5.	Whether service tax would apply on the services provided by way of currency conversion by a bank/ entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
6.	Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax?	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

B. Important Decisions

1) Union Of India Vs. Kerala Bar Hotels Association, 2014-TIOL-1913-HC-KERALA-ST

Issue: Legislative competence of Union Government for levy of service tax on services provided by Hotels and restaurants.

Held: On writ petition, the single member bench of the High Court had held that the Union Government does not have legislative competence to levy service tax on the transactions of Hotels and restaurants.

On appeal by Union Government, the Division Bench of Kerala High Court upheld the decision of the single member bench and held that since the whole of the consideration received by a restaurant owner for supply of food and other articles of the human consumption, including the service part of the transaction, is exigible to tax by the State by virtue of the constitutional definition, it is not open to the Union to characterise the same transaction as a service for imposition and levy of service tax. The Court also disagreed with the views of the Bombay High Court on the same issue as reported in 2014-TIOL-498-HC-MUM-ST.

2) Tech Mahindra Ltd. Vs. CCE, 2014(36) STR 241(Bom.)

Facts: The appellant engaged in development of software for overseas telecom operators. The offshore services relating to software development are being undertaken from India by employees of the appellant where as onsite activities are sub-contracted to their foreign subsidiary. The appellant treating the services as exports, claimed refund of Cenvat credit in terms of Rule 5 of Cenvat Credit Rules, 2004, which was rejected on the ground that the services are not provided from India, which was a condition to be fulfilled to qualify as exports.

Held: On appeal, the High Court held that the services are being performed outside India by the foreign subsidiary of the appellant and are not provided from India and hence the services would not qualify as export.

[Note: This decision pertains to the period upto 27.2.2010 as there was a specific condition of 'provided from India and used outside India]

3) CCE vs. Akruthi Projects., 2014-TIOL-1925-CESTAT-MUM

Facts: Assessee, who is a sub-contractor for a construction activity and paid service tax on the portion of the construction service provided by them by availing exemption under Notification No. 1/2006-ST. The main contractor also paid service tax including the portion of services provided by the assessee. Based on the above, assessee claimed refund on the ground that there is double payment on the same transaction.

Held: Relying on the decision of the State of Andhra Pradesh Vs. L & T 2008-TIOL-158-SC-VAT, wherein it was held that value of works contract of sub-contractors shall not be included for computation of VAT of the main contractor, Tribunal held that the, both sub-contractor and main contractor shall not be made liable to pay service tax on same transaction and hence the assessee is eligible for refund.

4) SKF India Vs. CCE, 2014-TIOL-1924-CESTAT-MUM

Facts: Assessee entered into an agreement with their foreign group company for development and supply of software products by SKF, Sweden to the appellant in India. For period of period from April 2006 to April 2008, the department demanded service tax under the heading 'Business Auxiliary Services'.

Held: Tribunal after considering the definition of Business Auxiliary Services(BAS) and Information Technology Software Services (IT services) and the scope of the agreement, held that the services received by the appellant is in the nature of IT services which was brought under tax net from 16.5.2008. Such services were specifically excluded from the definition of BAS. Therefore, the services are not liable to service tax during the period under demand.

5) M/s GE India Technology Centre Pvt Ltd Vs CST, 2014-TIOL-1931-CESTAT-BANG

Facts: Assessee engaged in the provision of IT services, availed credit of service tax paid on Chartered

Accountant services, Business Auxiliary Services, Event Management Service, Photography service, Installation and Commissioning service, Mandap Keeper services, which was disputed by the department on the ground that the said services are not essential for provision of output services.

Held: Allowing the credit, Tribunal held that the above services are relatable to assessee's business. Tribunal further, held that denial of credit on the ground that input services do not qualify as an essential input service is improper as what law requires is an input service to be used for providing output service and essentiality of such service to provide output service is not one of the requirements specified in the law.

6) **M/s Microsoft Corporation (I) (P) Ltd. Vs. CCE 2014-TIOL-1964-CESTAT-DEL**

*Issue***:** Appellant was acting as agent of foreign company to promote, market the software products of the foreign company. The appellant received consideration in foreign exchange and claimed that the services qualify to be exports and hence no service tax was liable to be paid. The said contention was disputed by the department on the ground that the services were performed in India and the services are consumed in India by the buyers.

The members of the Tribunal differed in their views and hence the issue was referred to third member.

Held: On reference, the Third Member of Tribunal concluded that services would qualify as exports on the basis of following observations:

a) Decision of the Tribunal (third member reference) Paul Merchants Ltd. [2012-TIOL-1877-CESTAT-DEL], held that the services of agents would fall under Business auxiliary services and would qualify to be exports where the recipient of service is located outside India.

b) Marketing services provided by the appellant is for their group companies located outside India and cannot be termed as provided at the behest of any Indian customer.

c) Services are being provided by the appellant to Singapore Recipient company and to be used by them at Singapore, may be for the purpose of the sale of their product in India and not used by the Indian buyer.

7) **M/s Paradise Mehak Properties Pvt Ltd Vs CCE & ST - 2014-TIOL-2156-CESTAT-DEL**

Issue: Appellants are owners of buildings and the same are rented by them to *Indian Hotels Co. Ltd.* who were running a hotel in the said building. The dispute is whether service tax is payable by appellant on the rent received.

Held: Tribunal held that leasing/renting of immovable property for a hotel is expressly excluded from the ambit of the taxable service under Section 65(105)(zzzz) and hence the appellants were not liability for payment of service tax on the rent received.

8) **M/s Kedar Constructions Vs CCE - 2014-TIOL-2138 - CESTAT-MUM**

Issue: Appellant is engaged in construction of structures for setting up of transmission lines for electricity, the question is whether the said activity is eligible for exemption under Notification No.11/2010-ST?

Held: With reference to exemption of all the services provided for transmission of electricity under Notification No. 11/2010-ST, Tribunal held that the expression "for" used in the term 'for transmission', means 'for the purpose of' Transmission. As per the Electricity Act, 2003 transmission includes conveyance of electricity by transmission lines and includes setting up of sub-stations to accommodate transformers etc. Therefore, it was held that the activity of commercial or industrial construction in this regard also stands exempted.

Note: The above referred exemption notification was applicable upto 30.06.2012

9) **Kingfisher Airlines Pvt Ltd Vs CST - 2014-TIOL-2112-CESTAT-MUM**

Issue: Appellant availed loan from BNP Paribas. Money lender secured the said loan amount through COFACE, France and paid insurance guarantee to COFACE, France. Service Tax was demanded on the amount paid to COFACE, France on the ground that the appellant had received taxable services from abroad.

Held: With reference to the transaction between BNP Paribas who had secured the loan amount from COFACE, France for lending it to the appellant, Service receiver is BNP Paribas and the service provider is COFACE, France & the appellant is only the beneficiary of the transaction held between BNP Paribas and COFACE, France. Therefore, it was held that as the appellant is neither service provider nor service recipient and hence the appellant is not liable to pay service tax at all under reverse charge mechanism.

10) **CC & ST Vs M/s Bioplus Life Sciences Pvt Ltd - 2014-TIOL-2077-CESTAT-BANG**

With reference to eligibility of the assessee to avail CENVAT credit on various input services, Hon'ble Tribunal held that credit availed on building lease rent, computer related services, management consultancy, professional charges etc., and similar connected services held as activities directly relatable to manufacturing and are admissible as input services. Further, it was held that the observation of original authority that fumigation charges fall under ambit of post-manufacturing expenses is rejected because without fumigation of the goods, they cannot be cleared and exported.

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ಮಿತಿಯಿರಲಿ ನವೀಕರಣದಲಿ

ಸಿ.ಎ. ಹೆಚ್. ಶಿವಕುಮಾರ

"I fear the day that technology will surpass our human interaction. The world will have a generation of idiots"
- Albert Einstein.

ಯಾವ ದಿನಗಳನ್ನು ನೆನೆದು ಸುಮಾರು ಎಪ್ಪತ್ತು ವರ್ಷಗಳ ಹಿಂದೆ ಐನ್‌ಸ್ಟಿನ್ ಖಿನ್ನನಾಗಿದ್ದನೋ ಆ ದಿನಗಳು ನಮ್ಮೆದುರು ಬಂದು ನಿಂತಿವೆ. ಅತಿಯಾದ ತಾಂತ್ರಿಕತೆಯು ಮಾನವೀಯ ಮೌಲ್ಯಗಳು ಮತ್ತು ಅನುಸಂಧಾನದ ಮಧ್ಯೆ ತಡೆಗೋಡೆಯಾಗಿ ಬೆಳೆದು ನಿಂತು ಚಿತ್ತವ್ಯಾಕುಲರಾದ ನವಸಂತತಿಯ ಸೃಷ್ಟಿಗೆ ಜಗತ್ತಿನಾದ್ಯಂತ ಕಾರಣವಾಗಿರುವುದು ನಮ್ಮ ಕಣ್ಮುಂದಿರುವ ಸತ್ಯ. ಅಂತರ್ಜಾಲವಿಲ್ಲದ ಹಲವು ದಶಕಗಳ ಹಿಂದೆ ಯಾವುದೇ ತಂತ್ರಜ್ಞಾನ ಒಂದು ದೇಶದಿಂದ ಇನ್ನೊಂದು ದೇಶಕ್ಕೆ ಸಂಚರಿಸಲು ತೆಗೆದುಕೊಳ್ಳುತ್ತಿದ್ದ ಸುದೀರ್ಘ ಕಾಲಾವಧಿ ಇಂದು ಸಂಪೂರ್ಣವಾಗಿ ಇಲ್ಲವಾಗಿದೆ. ಇಡೀ ವಿಶ್ವವನ್ನೇ ವ್ಯಾಪಿಸಿಕೊಳ್ಳುವ ಅಗಾಧ ಸಂವಹನೀ ಸಾಮರ್ಥ್ಯವುಳ್ಳ ಅಂತರ್ಜಾಲದ ಪ್ರಭಾವದಿಂದಾಗಿ ತಂತ್ರಜ್ಞಾನದ ಹೊಸ ಆವಿಷ್ಕಾರಗಳು, ಅದರ ಬಳಕೆ, ದುರ್ಬಳಕೆ, ಇತ್ಯಾದಿಗಳೆಲ್ಲ ಮನುಕುಲವನ್ನೇ ಕ್ಷಣಮಾತ್ರದಲ್ಲಿ ಆಕ್ರಮಿಸಿಕೊಳ್ಳುತ್ತಿವೆ.

ತಂತ್ರಜ್ಞಾನದ ಮೇಲಿನ ಅತಿಯಾದ ಅವಲಂಬನೆಯಿಂದಾಗಿ ನಿಸರ್ಗದತ್ತವಾದ ಮಾನವ ಬುದ್ಧಿಶಕ್ತಿ ತಾಂತ್ರಿಕತೆಯ ಅಡಿಯಾಳಾಗುತ್ತಿದೆ. ರೋಗಿಯ ದೈಹಿಕ ಮತ್ತು ಮಾನಸಿಕ ಸಮಸ್ಯೆಗಳ ವಿವರಣೆ ಪಡೆದು ರೋಗವನ್ನು ಗುರುತಿಸಿ ಸೂಕ್ತ ಚಿಕಿತ್ಸೆ ಕೊಡುವಂತಹ ವೈದ್ಯಕೀಯ ಪದ್ಧತಿಯಲ್ಲಿ ಇಂದು ಸಂಪೂರ್ಣ ಮಾರ್ಪಾಡಾಗಿದ್ದು ಎಲ್ಲಾ ಖಾಯಿಲೆಗಳಿಗೂ ಪ್ರಯೋಗ ಶಾಲೆಯ ಸಿದ್ಧ ಮಾದರಿಯ ಸಂಖ್ಯಾವರದಿಗಳನ್ನು ಓದಿದ ನಂತರವೇ ಔಷಧೋಪಚಾರ ಆರಂಭಿಸುವಂತಹ ತಾಂತ್ರಿಕ ದಾಸ್ಯಕ್ಕೆ ಇಡೀ ವ್ಯವಸ್ಥೆ ಬಲಿಯಾಗಿದೆ. ಇಂತಹ ಸ್ಥಿತಿಯನ್ನೇ **The World will have a generation of idiots** ಎಂದು ಐನ್‌ಸ್ಟೀನ್ ಕರೆದದ್ದು.

ಕಳೆದ ದಶಕದಲ್ಲಿ ಭಾರತೀಯ ಸ್ಟೇಟ್ ಬ್ಯಾಂಕ್, ಜೀವ ವಿಮಾ ನಿಗಮ, ಭಾರತೀಯ ರೈಲ್ವೆಯಂತಹ ದೈತ್ಯಾಕಾರದ ಸಂಘಟನೆಗಳಲ್ಲಿ ಕೈ ಬರಹದ ರೂಪದಲ್ಲಿ ಲೆಕ್ಕಪತ್ರಗಳನ್ನು ನಿರ್ವಹಿಸಲಾಗುತ್ತಿತ್ತು ಎಂದರೆ ಇಂದಿನ ನವಜನಾಂಗದ ಸಿ.ಎ. ಸಮೂಹ ನಂಬಲಿಕ್ಕಿಲ್ಲ. ತಾಂತ್ರಿಕತೆಯಿಂದಾಗಿ ಲೆಕ್ಕಪತ್ರಗಳ ನಿರ್ವಹಣೆಯಲ್ಲಿ ಎಷ್ಟು ಅನುಕೂಲವಾಗಿದೆಯೋ ಅದೇ ದಿಕ್ಕಿನಲ್ಲಿ ಅನಾನುಕೂಲವೂ ಆಗಿದೆ. ಲೆಕ್ಕಪತ್ರಗಳ ನಿರ್ವಹಣೆ ಮತ್ತು ಲೆಕ್ಕಪಟ್ಟಿಗಳ ನಿರೂಪಣೆಯ ಪ್ರಕ್ರಿಯೆ ಸಂಪೂರ್ಣ ಗಣಕೀಕರಣವಾಗಿರುವ ಇಂದಿನ ಸ್ಥಿತಿಯಲ್ಲಿ ಈ ಕ್ಷೇತ್ರವನ್ನು ಪ್ರವೇಶಿಸುವ ಹೊಸ ಜನಾಂಗ ಲೆಕ್ಕಶಾಸ್ತ್ರದ ಮೂಲ ಪಟ್ಟುಗಳನ್ನು ಕರಗತಮಾಡಿಕೊಳ್ಳಲು ಬೇಕಾದ ಏಕಾಗ್ರತೆ ಮತ್ತು ತನ್ಮಯತೆಯಿಂದ ವಂಚಿತವಾಗುತ್ತಿದೆ. ಆದ್ದರಿಂದ ಅಲ್ಲಲ್ಲಿ ಅರೆಬೆಂದ ಮಡಕೆಗಳು ಕಾಣಸಿಗುತ್ತಿವೆ. ತಂತ್ರಜ್ಞಾನದ ಸದ್ಬಳಕೆಯಾಗುವ ಬದಲು ಅತೀ ಬಳಕೆಯಾಗಿ, ದುರ್ಬಳಕೆಯಾಗಿ ವೃತ್ತಿಕೌಶಲ್ಯದ ಕಲಿಕೆಯಲ್ಲಿ ವಿಚಲತೆಯುಂಟಾಗಿ ಸಿ.ಎ. ವೃತ್ತಿ ಬಳಲುತ್ತಿರುವಂತೆ ಭಾಸವಾಗುತ್ತಿದೆ.

1879–1955ರ ಅವಧಿಯಲ್ಲಿ ಬದುಕಿದ ಐನ್‌ಸ್ಟೀನ್ ಕಂಡ ಕಾಲಜ್ಞಾನವನ್ನು ನಮ್ಮ ದೇಶದ ದಾರ್ಶನಿಕರೂ ಸಹ ಅನುಮೋದಿಸಿದ್ದಾರೆ. ಅದರಲ್ಲೂ ವಿಶೇಷವಾಗಿ ಕನ್ನಡ ಕವಿಗಳು ತಮ್ಮ ಕವನಗಳಲ್ಲಿ ಅತೀ ತಾಂತ್ರಿಕತೆಯ ಬಗ್ಗೆ ಮುನ್ನೆಚ್ಚರಿಕೆ ನೀಡಿದ್ದು ಇಲ್ಲಿ ಉಲ್ಲೇಖನೀಯವಾಗುತ್ತದೆ. ತಾಂತ್ರಿಕತೆಯ ಸಹಾಯವಿಲ್ಲದೆ ನಮ್ಮ ಮನುಷ್ಯ ಪರಂಪರೆಯನ್ನು ಉದಾತ್ತವಾಗಿ ಬೆಳೆಸಿ ಮುನ್ನಡೆಸಿ ನಮಗೆ ಉಳಿಸಿಕೊಟ್ಟು ಹೋಗಿರುವ ಹಿರಿಯರನ್ನು ಸ್ಮರಿಸುತ್ತಾ ಡಿ.ವಿ. ಗುಂಡಪ್ಪ ಹೇಳುತ್ತಾರೆ. "ಮತಿವಂತರಿದ್ದಲ ನಮ್ಮ ಹಿಂದೆಯೂ ಇಲ್ಲಿ, ಚಿಂತಕರು ಜನಕೆ, ಕೃತಪರಿಶ್ರಮರು? ಅತಿವೈದ್ಯದಿಂದ ಹೊಸ ರುಜಿನಕ್ಕೆಡೆಯಾದೀತೋ, ಮಿತಿಯಿಂ ನವೀಕರಣ ಮಂಕುತಿಮ್ಮ". ಸರಳ ಸುಂದರಜೀವನ ಶೈಲಿಗೆ ತಾಂತ್ರಿಕತೆ ತಂದೊಡ್ಡುತ್ತಿರುವ ತೊಡಕುಗಳನ್ನು ಅಂದೆಯೇ ಗ್ರಹಿಸಿದ್ದರೋ ಎಂಬಂತೆ 1970ರಲ್ಲಿ ಕವಿ ನಿಸಾರ್ ಅಹಮದ್ ಬರೆದ ಸ್ಪಟಿಕದ ಸಲಾಕೆಯಂತಿರುವ ಸ್ಪಷ್ಟ ಸಾಲುಗಳು ಇಂದಿಗೂ ಸರ್ವ ಸಮ್ಮತವಾಗಿವೆ.

ರಸ್ತೆ ಹಿರಿದಾಗಿ ಘಟ್‌ಪಾತು ಕಿರಿದಾಗಿ
ಓಡಾಟ ಹೆಚ್ಚಾಗಿ ನೆಮ್ಮದಿಯು ಪೆಚ್ಚಾಗಿ
ಲೋಕ ಕಂಪ್ಯೂಟರಿನ ಸ್ವಿಚ್ಚು ತಂತಿಗಳಲ್ಲಿ ಸಂದಿಗ್ಧವಾಗಿ
ಬೆಲೆಗಳಲ್ಲಾ ಬಿದ್ದು ಹರಡಿ ದಿಕ್ಕಾಪಾಲು
ಎಸೆಯುತಿವೆ ಪ್ರತಿಕ್ಷಣವೂ ಸರಳ ವೃದ್ಧಾಪ್ಯಕ್ಕೆ ಹಿರಿಸವಾಲು. ■

ಗಂಗೆಯ ಗುಣಗುಣಿತ

ಬದುಕಿನಾ ಹರಿವಿಗೆ ನೂರು ತಿರುವುಗಳು
ಬಂಡೆಗಳ ಉಸಿರಿನ ಮೂಲೆಯಿಂದ ಹುಟ್ಟಿದ ಹನಿ ನಾನು
ಇರಲಾರದೆ ಶಿವನ ತಲೆಯ ಮೇಲೆ... ಹರಿದೆ ನಾನು ಮೈಮರೆತು.

ಸಾವಿರ ಗಾವುದಗಳ ದಾಟಿದ ನಿರ್ಮಲ ಮನಸ್ಸು
ಭರತಖಂಡದ...ಹಸಿರು...ಉಸಿರು ನಾನು
ನನಗೆ ನೀವು ಕರೆದಿರಿ ಗಂಗೆಯೆಂದು

ನಾನೊಂದು ನಿಸರ್ಗದ ಹೊನ್ನು.....ನನ್ನಡೊಲಳಗೆ ನೂರು ಶವಗಳು
ಬೇಡ ಈ ಅತ್ಯಾಚಾರ..... ಅನಾಚಾರ ಕತ್ತಲು
ನಾನು ಉಕ್ಕಿ ಹರಿದರೆ ತಡೆಯಲಾರಿರಿ ನೀವು

ಬೇಕು ನನಗೆ ನಿರ್ಮಲತೆ ಹಾಳು ಮಾಡದಿರಿ
ನನ್ನ ಬದುಕು ಉಳಿಸಿರಿ.
ನಿಮಗೆ ನಾನು ಕೊಡುವೆ ಸ್ವಚ್ಛ ನೀರು..ಉಸಿರು.
ಭಾಗಿಯಾಗಿರಿ ನವಭಾರತದ ನಿರ್ಮಾಣದಲ್ಲಿ ಎಲ್ಲರೂ.

– ಸಿ.ಎ. ಚಂದ್ರಕಾಂತ್ ಎಸ್ ಹಳ್ಳಿ

Gist of the Recent Judicial Pronouncements under the Karnataka Commercial Tax Laws

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

I) Bharath Heavy Electricals Ltd and Others Vs State of Karnataka (TS-499-HC-2014 (Kar)-VAT) dated 4.11.2014)

***Issue:* Whether interest is chargeable from the return date or from the date of assessment on non production of C forms under the CST Act 1956.**

The department can levy the interest and penalty under KVAT Act for non submissions of C forms under the CST Act 1956.There was an argument that whether interest should be levied from the date of tax due or from the date of assessment. The Tribunal has decided that it should be from the date of assessment as per Karnataka Appellate Tribunal case in BHEL Vs State of Karnataka 2515-2518 dated 4.8.2011 but the appeal was filed by State to higher authority. The High Court quashes the Tribunal order and interest is chargeable from the date of furnishing monthly returns in case of default in furnishing C form declarations claiming concessional rate under CST Act. The Tribunal has misread the Honorable Supreme Court judgment in case of J.K.Synthetics wherein liability to pay tax and interest arises after adjudication and not earlier. In the instant case assessee was aware of his liability on interstate sale and hence tax paid pursuant to assessment order ought to have been paid along with the return as prescribed under the CST Act. **Therefore interest is chargeable from return date on non production of C form and not from the date of Assessment under CST Act 1956.**

II) S R Venkatareddy Vs The State of Karnataka (Karnataka HC) CRP No 256/2012 (Tax- KTEG)

***Issue:* Whether L & T 752 Vibratory Compactor is a "motor vehicle" or a "machinery" and therefore, liable to tax under the K.T.E.G. Act?**

The Notification empowers the State Government to levy and collect tax under the Act on earth movers such as dumpers, dippers, bulldozers and the like and adopted for use on road. Therefore, Section 4-B deals with levy of tax on motor vehicles. Section 3 deal s with levy of tax on all goods except the goods covered under Section 4-B. In order to attract tax under the provisions of Section 4-B of the K.T.E.G. Act, a motor vehicle must have entered into a local area for use or sale therein and consequently, it is liable for registration under the Motor Vehicles Act. If the vehicle is not registered under the Motor Vehicles Act, that would not take away the vehicle outside the purview of Section 4-B. The question is whether it is machinery or a motor vehicle under the Scheme of the Act? In the Notifications issued, it is clear, for the purpose of the Karnataka Sales Tax Act, "Compactor" is treated as a "machinery" and not a "motor vehicle" as contended by the Revenue.

The provisions of the Karnataka Sales Tax Act and the description of the entries therein have no application while deciding the case under the K.T.E.G. Act. Therefore, the contention of the Revenue that the motor vehicle is not registered, it cannot be treated as motor vehicle and has to be treated as machinery is without any substance. From the aforesaid Notification, it is clear, the understanding of the Government is that tax is leviable under Section 4-B, on all earth movers, dippers and bulldozers and the like and not under Section 3. The Revenue relies on the Notification **No. FD 11 CET 200 2(1)** dated 30 th March, 2002 where the tax is levied under Section 3 of the KST Act on machinery (all kinds and parts and accessories thereof but excluding agricultural machinery.

On analysis of the above two Notifications the earth movers, dumpers, dippers, bulldozers and the like and adopted for uses on road do not fall within the meaning of the word machinery (all kinds) even though it is treated as machinery under the Karnataka sales Tax Act.

III) <u>Mandovi Motors Private Limited Vs State of Karnataka dated October 20 2014 TS- 476-HC-2014 (Kar)-VAT</u>

***Issue:* Whether the concessional rate of tax can be applied to demo car used by the authorized dealer?**

Mandovi Motors Private limited sells the car units to the dealers for demonstration and test drive to get an idea of the units and its physical appearance. When there is change in models the dealers will sell them as used cars for a price. As per the Notification dated No FD 300 CSL 2005 dated October 25, 2005, a reduced rate of tax is applicable on the sale of used cars. Therefore dealers charged the lower rate of taxes on such demo cars based on the above notification. The Honourable High Court disallows concessional tax rate of 4% on sale of demo cars by authorised dealer, under Karnataka Value Added

Tax Act, 2003. The Notification dated October 25, 2005 applies to purchase and sale of used cars, not to brand new cars purchased from manufacturer and sold after use.

If the dealer uses the new car for demonstration purpose and subsequently sells it to a customer, it would not be case of "purchase and sale of a used car" envisaged under Notification. Therefore the Tribunal and High Court has rightly disallowed the Notification benefit to the authorised dealer.

IV) State of Karnataka Vs Ashok Iron works Pvt Ltd dated 9th October 2014 (TS-460-HC-2014(KAR)-VAT)

***Issue:* Whether the dealer is entitled for input tax credit on consumables used for the job work even though output tax is not payable on such job work?**

Ashok Iron works Pvt Ltd carries on business of manufacturing iron casting and also undertakes machining, assembling and other job works. The Assessee has claimed the input tax in respect of the local purchases of raw materials, consumable, etc consumed in the execution of labour works undertaken and for manufacturing of goods. The Honourable High Court allows input tax deduction under Karnataka Sales Tax Act on consumables used during job-work, being in course of business of manufacturing iron castings.

Though no output tax payable on job-work, assessee entitled to claim input tax credit of consumables on total taxable turnover of its business, subject to stipulated restrictions under the Act.

V) State of Karnataka Vs Godrej Consumer Products Limited dated October 8 2014 [TS-457-HC-2014(KAR)-VAT]

***Issue:* Whether Hit Rat and Hit line would be considered as Mosquito repellent so as to be taxable at 12.5% or an insecticide taxable at 4%.**

Entry 23 of Schedule III of KVAT Act specifically excludes phenyl / liquid toilet cleaners / floor cleaners / mosquito repellents "and the like" used for non-agricultural or non-horticultural purposes; If legislature's intention was to exclude all insecticides / pesticides used for non-agricultural / non-horticultural purposes, same would have been expressly mentioned without using specific items; What is excluded from ambit of 'insecticide' is mosquito repellent and not mosquito killer.

Therefore the products used for killing flying / crawling insects are not 'mosquito repellents' even if they incidentally kill mosquitos, hence not taxable @ 12.5% but at lower rate of 4% under Karnataka VAT Act.Therefore Hit Rat and Hit line will be taxable at 4% and not at 12.5%

VI) State of Karnataka Vs Vasawi wood Industries TS-398-HC-2014(KAR)-VAT

***Issue:* Whether timber dealer was liable to VAT under KVAT Act on sale of used car?**

The Appellant was dealer in timber and upon deemed assessment the tax was charged on sale of used car under section 4(1)(b) of KVAT Act at 12.5% with penalty. It was contended by the Revenue that VAT applicable to dealer as a "casual dealer" in terms of Sec 2(12)(b) of KVAT Act. The occasional sales of business nature would render dealer as a "casual dealer",

Therefore VAT is not applicable on sale of used car under KVAT Act 2003.

VII) TVS Motors Co Ltd Vs State of Karnataka TS-276-HC-2014(KAR)-VAT

***Issue:* Whether supply of food and beverages at subsidised rates at factory canteen constitutes 'sale' u/s 2(29) of Karnataka VAT Act**;

The appellant collected the amount from employees and guests and contends that canteen is a welfare measure required under the Factories Act and there is no transfer of property in food items and it is not a sale. It is contended by the revenue that running of canteen by dealer falls within the definition of 'business' u/s 2(6) of KVAT Act and it includes any transaction in connection / incidental / ancillary to main business. It is contended that once there is sale transaction, irrespective of profit or loss, such transaction has to be shown in VAT returns.

Therefore it is held that proof of profit-motive is not necessary to constitute business and supply of food and beverages at canteen constitute 'sale' under the KVAT law.

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Renting of Immoveable Property Service

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

In this article we look at the service tax implications of renting of immoveable property. There have been a lot of disputes with Central taxes being demanded even though immoveable property is state subject, leading to challenges in Courts of law and subsequent amendments in the law. Now it is clear that it is payable. The government is collecting around Rs.7000 Crores per annum from this service.

Background

The category of renting of immovable property service was introduced under service tax in the year 2007 effective 01.06.2007and was madeapplicable to immovable property for use in business or commerce".

Though the validity of levy of service tax on renting of immoveable property was questioned and Delhi High Court in the first Home Solutions Retail case held that service tax is not leviable on 'renting of immovable property', but on services in relation to 'renting of immovable property'. An appeal against Delhi High Court (2011-TIOL-610-HC-DEL-ST-LB) was filed before Supreme Court and matter is pending before Hon'ble Supreme Court, the interim order in 2011-TIOL-103-SC-ST makes it clear that there would be stay of recovery [not stay of proceeding] and further it is not applicable for service tax becoming due from 1st of October 2011.

From the above, it is clear that even though the matter is presently sub- judice there seems to be a view that liability would need to be discharged. Until the Supreme Court view on the same is clear; the revenue would be in a position to demand the same.

Discussion under Negative List based taxation

The term renting defined in section 65B(41) is as follows- (41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property; As can be seen that renting is defined in inclusive basis to include a leasing or other like arrangements in respect of immovable property.

The **negative list** has an entry namely services by way of renting of residential dwelling for use as a residence. This entry covers only **residential dwelling when it is for use as a residence.**

There is an exemption at Entry no. 19 of Notification 25/2012-ST dated 20.06.2012 which exempts: *"Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent."*

Certain Common Issues

Till recently there was uncertainty about levy, and many landlords had not been paying service tax.In addition there are some areas of confusion with regards to renting of immoveable property service discussed below.

Taxability of Jointly Owned property[Co-Owners]

Service tax is leviable on the value of taxable services provided by one person for another for a consideration. In other words, the levy is attracted on every person who is providing taxable services. As per section 68(1), every person providing taxable services is liable to pay service tax subject to small service provider exemption.

Small service provider exemption exempts from service tax the taxable services provided of the value of Rs 10 Lakhs pa, provided previous year value of taxable services is less than Rs 10 Lakhs. On perusal of the said notification, we find that the said notification talks about the aggregate value of the taxable services rendered, which should be considered for the purpose of exemption. If taxable services comes to less than Rs 10 Lakhs for each service provider, then exempted from payment of service tax.

If the rental agreement is specifically indicating that each of the co-owners are renting out the property to tenant. Also each of the co-owners received separate cheques for rent from tenant. In such scenario, each co-owner is individually considered as a provider of service, and each such service provider is eligible to small service provider exemption of Rs 10 Lakhs. As the aggregate value fails to exceed threshold limit for each co-owner service provider, service tax is not payable by them.

Also, in the numerous cases the Hon'ble CESTAT has held that benefit of SSP exemption has to be given to every owner of the property in a separate manner including in recent decision in Dutsons Builders & Estates Pvt Ltd Vs C.C.Ex, Cus. & ST, Visakhapatnam-I (2014-TIOL-1930-CESTAT-BANG) where citing Manju Champaklal Bafna: 2013 (31) S.T.R. 511 (Tri.-Ahmed.) waiver of pre-deposit granted where there were co-owners of the property.

Service tax on lease premium

If initially an agreement to lease the land to eligible applicants on payment of premium is entered into subject to construction of commercial buildings on the land and once the construction is completed, a lease agreement is entered into on payment of lease rental. When the vacant land is given on lease or licence for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce, there is a possibility that service tax could be demanded on the

said activity under renting of immovable property. But whether premium is liable?

As per definition of renting in Section 65B(41) includes **letting, leasing**, licensing **or other similar arrangements in respect of immovable property**;The expressions "other similar arrangements" used are expressions of width and amplitude. It would include not only the actual leasing or renting but also any other activity in relation to such leasing/ renting. Therefore, the agreement to lease which is entered into prior to the actual leasing and which is in relation to the lease undertaken subsequently subject to construction of building, etc. could also come within the purview of service tax levy. Therefore, the distinction sought to be made in respect of amounts collected as a premium may not matter and the levy would apply, in both the situations.

There were contradicting decisions on service tax applicability on lease premium with one set of decisions holding it is liable and another set saying it is not liable to service tax. In the decision in *CIDCO* - 2014-TIOL-1368-CESTAT-MUM where Tribunal had taken a prima facie view that service tax is payable on the lease premium and lease rent and accordingly directed pre-deposit.

An alternate view is possible that Service tax cannot be charged on the premium or salami paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee as this amount is not for continued enjoyment of the property leased. Since the levy of service tax is on renting of immovable property& not on transfer of interest in property from lessor to lessee, service tax would be chargeable only on the rent whether it is charged periodically or at a time in advance. Similarly order set aside and matter remanded in Greater Noida Industrial Development Authority vs CCE 2014-TIOL-1741-CESTAT-DEL.

Applicability of service tax on Service Apartments.

The apartments could be given on rental basis for few days or for longer periods to working men/women or students who could stay in same dwelling for a longer period. The negative list entry exempts the residential dwelling for use as residence. It does notinclude a hotel, motel, inn, guest house, camp site, house boat, or like places for temporary stay. Therefore the intention seems to be covering such places where there is some sort of permanence.

Even if the dwelling could be used as a house, apartment etc for regular stay, it could be covered in this entry. It is not specifically set out in the negative list based taxation what would be considered as short stay or long stay. We could look for guidance into earlier service tax law, where the taxable service of providing an accommodation for a continuous period of less than 3 months was liable to service tax. Applying itto understand the position under negative list taxation, wherever the accommodation is provided for less than 3 months could be liable to service tax.However they maybe outside the purview if the Tariff is less than Rs. 1000/- per day.For a period of stay longer than 3 months covered in negative list entry, may not be leviable to service tax.

Eligibility to Cenvat Credit

Due to mis-information there was great resistance on part of landlords who were paying service tax to avail credits related to rentals. There was circular No. 98/1/2008-S.T under earlier law, where it had artificially restricted cenvat credit of service tax related to renting of immoveable property. Therefore credit not availed by majority of the owners of property. The circular was not in line with law and non est to that extent and credit was actually available.

As per present Cenvat credit Rules, the provider of output service can avail all eligible credits. At the same time, there is specific restriction on availing certain specified credits on inputs and input services namely:

The input definition excludes "any goods" used for construction or execution of works contract of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods except for the provision of service portion in the execution of a works contact or construction service and such credits would not be available.

The input service definition excludes the following(a) Service portion in the execution of a works contract and construction of a complex, building, civil structure or a part thereof, including complex or building intended for sale to a buyer, wholly or partly, to extent used for

- Construction or execution of works contract of a building or a civil structure or a part thereof or
- Laying of foundation or making of structures for support of capital goods. However these credits would be eligible if such services are for provision of specified services mentioned above, ie service portion in works contract.

CENVAT credit on the inputs/capital goods used in the creation of immovable property was held to be admissible as per spate of decisions. So far as credit on input services used in the construction of immovable property given on rent is concerned, such creditwas also held eligible in number of decisions.

Recently in M/s Laxmi Enterprise Vs CCE & ST 2014-TIOL-2042-CESTAT-AHM where it was held by CESTATthat CENVAT Credit on inputs, input services with respect to services used in construction of immovable property which is subject to service tax under renting of immovable property eligible.

It needs to be noted such favourable decisions are under old law, and there is a possibility that specific restriction in inputs and input services definition could be used to restrict construction credits used for building or a civil structure or laying of foundation or making of structures for support of capital goods such as tanks, as on date.

Conclusion

In this article, the paper writer has sought to examine the scope and coverage of renting of immoveable property service and common issues. For further queries post at

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The Demise of the National Tax Tribunal

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On September 25, 2014, a five-judge bench of the Supreme Court of India, in a unanimous judgment (Justice Rohinton Nariman wrote a separate but concurring opinion), declared the National Tax Tribunal Act, 2005 ("NTT Act"), unconstitutional. See Madras Bar Association v. Union of India, (C.A. No. 3850/2005 and connected matters). In striking down the Act, the Court, in its 278-page judgment, examined a number of highly complex legal issues, and an exhaustive analysis of each and every issue is simply not possible in this limited space. The purpose of this article is to very briefly explain what the Supreme Court has held and highlight the implications of this important judgment.

Background:

The NTT Bill was presented in the Lok Sabha in 2005. The proposed NTT was to be a quasi-judicial appellate tribunal vested with the powers to hear appeals challenging orders passed by appellate tribunals constituted under the Income Tax Act, the Customs Act, and the Central Excise Act. Thus far, the jurisdiction to hear appeals from orders of the ITAT and CESTAT was vested in the High Court. The NTT Bill expressed the following four primary reasons for constituting the NTT: (1) to reduce the pendency of tax cases in the various High Courts; (2) accelerate the disposal of tax cases and, consequently, release funds held up due to litigation which, in turn, will enable the government to implement national and welfare schemes; (3) to have uniformity in the interpretation of tax laws; and (4) the existing judges who were dealing with tax cases were from civil courts and, therefore, were not well-versed to decide complex tax issues. In short, the NTT was to be a forum that would, instead of the High Court, hear appeals from orders of the ITAT and CESTAT.

The constitution of the NTT was challenged on a number of grounds. Broadly, the contention of the petitioners was that the High Courts, which discharge judicial functions, could not be replaced by an extra-judicial body, and that the constitution of the NTT undermined the independence of the judiciary. More specifically, the petitioners contended as follows: (1) that the arrears of tax cases in the High Courts and the resulting holding-up of revenues for the government were exaggerated; (2) that the constitution of the NTT would not necessarily result in uniformity of judgments; (3) that High Court judges are well-versed to hear tax cases, and the fact that the apparent inability of High Court judges to hear tax cases formed a basis for the constitution of the Tribunal was unfortunate; (4) that it was impermissible for the legislature to abrogate the core appellate judicial functions traditionally vested in the High Court and confer the same on a quasi-judicial body; (5) that traditionally, the Income Tax Act, the Customs Act, and the Central Excise Act vested High Courts with the exclusive jurisdiction to decide questions of law emerging from tax disputes, and that it is not permissible to transfer the said jurisdiction to a quasi-judicial tribunal; (6) that the creation of a parallel judiciary by conferring Tribunals with jurisdiction traditionally reserved for High Courts was alien to the Constitution, which contemplates both the independence of the judiciary and the separation of powers of the three arms of government; (7) that Section 5(2) of the NTT Act which provided for the benches of the NTT to ordinarily function from the National Capital Territory would deprive the litigating assessee the convenience of the approaching the High Court of the State from which he/she hails; (8) that Section 5(5) of the Act, which vested the Central Government with the power to transfer a member of the NTT, would compromise the independence of the Tribunal as the government, which is always a stakeholder in any tax litigation, could use the provision for its own ends; (9) that Section 8, which fixed the tenure of a Tribunal member to be 5 years, would compromise the independence of the Tribunal as the government ultimately had to decide whether to the extend the tenure of the member or not; (10) that accountants, who were eligible to be appointed as members of the Tribunal, would not have the necessary judicial experience on the niceties of the law and that, therefore, an accountant member could not be expected to decide complex legal questions; (11) that under Section 7, each Bench would comprise of two representatives of the executive and one member of the judiciary and, therefore, the members of the Executive would effectively decide the outcome of each verdict; (12) that the same process of appointment applicable to High Court judges should be adopted for appointment of members and the Chairperson of the Tribunal; and (13) that as the Tribunal is required to decide questions of law, permitting persons other than legal practitioners to appear before the NTT would undermine the adjudicatory process. The Union of India opposed each of the contentions raised by the petitioners.

The Supreme Court's Judgment:

The first issue the Court decided was whether the power of judicial review, which has consistently been held to be an integral part of the basic structure of the Constitution, is breached by the provisions of the NTT Act. The Supreme Court in Minerva Mills v. Union of India, AIR 1980 SC 1789 and S.P. Sampath Kumar v. Union of India, 1987 (1) SCC 124, held that although the power of judicial review is an integral part of the basic structure of the Constitution, the Parliament was competent to amend the Constitution, and substitute in place of the High Court an alternative institutional mechanism conferred with the power of judicial review. However, the Court had warned that

the alternative institutional mechanism set up by Parliament must be no less effective than the High Court. Subsequently, in L. Chandra Kumar v. Union of India, 1997 (3) SCC 261, and Union of India v. R. Gandhi, 2010 (5) SCALE 514,[1] the Supreme Court held that though Parliament was competent to enact a law transferring jurisdiction from the High Court to a Tribunal, the Parliament could not transfer jurisdiction that was vested in the High Court by the Constitution itself. In the context of the NTT, the Supreme Court reaffirmed the above proposition by holding that powers vested in the High Court under various tax legislations, and not under the Constitution, can be transferred to a tribunal.

The Court also held that the power of judicial review conferred on the High Courts under Articles 226 and 227 remained unaltered by the NTT Act, and the power of the High Courts to exercise judicial superintendence over benches of the NTT had been consciously preserved. The Court observed that since the jurisdiction of the High Court had not been ousted, the NTT would be performing a supplemental role rather than a substitutional one. In view of the above observations, the Court held that the NTT Act did not violate the basic structure of the Constitution.

The second and third questions decided by the Supreme Court were whether: (1) the transfer of adjudicatory functions from the High Court to the NTT violates recognized Constitutional conventions, and (2) while transferring jurisdiction to the NTT, the standards and stature of the Court replaced, that is, the High Court were maintained.

As stated earlier, one of the contentions raised by the petitioners was that the Legislature had divested the High Court of its core judicial appellate function. The argument in this regard was that if the High Court had traditionally been vested with the power to determine questions of law arising under tax statutes, it would be impermissible to abrogate that function by conferring the power on a Tribunal. After examining the Income Tax Act, the Customs Act, and the Central Excise Act from a historical perspective, the Court observed that under each of the enactments, the power to decide questions of law was traditionally reserved for the High Court.[2] The Court, therefore, concluded that the core judicial appellate function to decide questions of law was traditionally vested with the High Courts.

Having recorded the above conclusion, the Court next discussed whether Constitutional convention requires the power to decide questions of law to remain with the High Court. The petitioners relied on judgments of the Privy Council and Supreme Courts of countries that were, like India, based on the Westminster model of government, and argued that Constitutional convention required judicial power that vested in courts at the time of enactment of the Constitution to remain with the same courts even after the Constitution had become operational. In short, the contention was that if a certain judicial power was exercised by a court at the time of enactment of the Constitution, the power must continue to be exercised by the same court even after the Constitution becomes effective. The argument of the petitioners was that at the time the Constitution was enacted in 1950, appellate jurisdiction with regard to tax matters was vested with the High Court to be determined by a Bench of at least two judges and, therefore, Constitutional convention required that the said jurisdiction remain with the High Court.

However, the Court did not accept the contentions of the petitioners in their entirety. The Court held that although the power vested with a court at the time of enactment of the Constitution must remain with that Court, the said judicial power could be exercised by an analogous Court or Tribunal with a different name. However, the Court stressed that while constituting the analogous Court or Tribunal, it will have to be ensured that the appointment and security of tenure of judges of that Court should remain the same as that of the Court that was substituted. In other words, the Court held that it was critical to ensure that the judges/members of the new Court/Tribunal should be appointed in the same manner and be entitled to the same security of tenure as the holder of the office on the date of enactment of the Constitution.

The Court then examined the individual provisions of the NTT Act in light of the observations set forth above. First, the Court struck down Section 5(2) of the Act as it provided for regular sittings of the Tribunal to be held in the National Capital Territory. The Court reasoned that while vesting jurisdiction in an alternative Tribunal, it was imperative for the Legislature to ensure that redress should be available to litigants with the same convenience and expediency as it was prior to the new Tribunal being constituted. Following its earlier decisions in Sampath Kumar and Chandra Kumar, the Court found that, by conducting its proceedings in the NCT, the remedy provided by the Tribunal would not be as efficacious as that provided by the High Courts.

Second, the Court examined the validity of sub-sections (2), (3), (4), and (5) with reference to the role of the Central Government in determining the sitting and constitution of benches of the NTT. Observing that the government is a stakeholder in all tax disputes, the Court held that it would not be appropriate for the Central Government to play any role with reference to the place of sitting of benches, the areas over which the Tribunal would exercise its jurisdiction, the composition of the benches, and the transfer of members from one bench to another. Such power was entrusted to the Chief Justice of India with respect to the jurisdictional High Courts and, therefore, the Court held that the new Tribunal was not a suitable and appropriate replacement. The Court observed that the vesting of such power with the Central Government would not ensure that the alternative adjudicatory authority is insulated from interference from the government. Accordingly, Section 5 was struck down by the Court.

[1] In this case, the Supreme Court upheld the Constitutional validity of the provisions of law that instituted the National Company Law Tribunal.

[2] Section 260-A under the Income Tax Act, Section 129-A of the Customs Act, and Section 35-G of the Central Excise Act provided an appellate remedy to the High Court from the concerned tribunal.

Third, the Court examined the validity of Section 6 of the Act, which set forth the necessary qualifications for a person to be appointed as a member of the NTT. Under the said provision, a person would be eligible for appointment if he/she has been a member of the ITAT or the CESTAT for a period of 5 years. A person is eligible for appointment to the ITAT or CESTAT is he/she has been an accountant for 10 years or held a certain designated post in the Central Excise or Customs Departments for 3 years. The Court examined whether the appointment of members with such qualifications would satisfy the constitutional conventions discussed earlier. Answering the question in the negative, the Court observed that it would not be possible for someone with no formal legal training to decide substantial questions of law under tax and other enactments, something which members of the NTT would be required to do. The Court opined that only a person with sufficient experience in the practice of law would be in a position to decide substantial questions of law. The Court further held that a Tribunal to which adjudicatory functions are transferred must be manned by judges whose stature and qualifications are commensurate to the court from which the adjudicatory functions were transferred. The Court observed that accountant and technical members cannot be said to have the same stature and qualifications as High Court judges. In view of the above observations, the Court held that the appointment of accountant and technical members violated constitutional conventions and, accordingly, struck down Section 6 of the Act, too.

Fourth, the Court observed that although the NTT Act did not expressly take away the High Court's power of judicial review, Section 24 of the Act, which provided for a direct appeal from the NTT to the Supreme Court, resulted in the power being denuded. That, the court held, was all the more reason for the NTT's composition to be commensurate to the High Court. Therefore, on this ground, too, the Court held Section 6 to be unconstitutional.

Fifth, the Court examined whether Sections 7 and 8, which provided for: (1) the manner of appointment of the Chairperson and members of the NTT, and (2) the tenure of members, satisfied the test of constitutionality. In this regard, the Court held that since the NTT was a replacement for the High Courts, the manner of appointment of the members must be the same as the procedure for appointment of High Court judges. The Court further held that since the NTT sought to replace the High Court, the conditions of service, the manner of appointments, transfer and removal, and the tenure of their appointments must be the same as that of High Court judges. The Court observed that the independence of the adjudicatory process would, otherwise, be compromised. As the Court found no such safeguards in Sections 7 and 8, the said provisions were held to be unconstitutional.

Sixth, the Court examined whether Section 13 was constitutional. Section 13 permitted a Company Secretary and a Chartered Accountant to appear in appeals before the Tribunal. The Institute of Chartered Accountants of India ("ICAI") submitted that CAs must be permitted to appear before the NTT because of their expertise and acumen in matters of taxation. The ICAI further submitted that CAs are permitted to appear before a number of Tribunals constituted under enactments such as the Securities and Exchange Board of India Act, the Telecom Regulatory Authority of India Act, the Companies Act, and the Competition Act. Therefore, it was submitted that there was no valid reason why CAs should not be permitted to represent cases before the NTT. During the hearing of the case, the Court directed the parties to file a compilation of various cases wherein provisions of different laws were to be taken under consideration while deciding tax disputes. On perusing the compilation filed by the parties, the Court observed that, in addition to interpreting tax enactments, tax cases required courts to examine legal issues arising out of family law, Hindu law, Mohammedan law, company law, law of partnerships, contract law, transfer of property law, law relating to trusts and societies, intellectual property law, and interpretation of statutes. Keeping in mind that the NTT would be required to decide substantial questions of law on issues under the above mentioned laws, the Court opined that it would be unacceptable in law to permit CSs and CAs to represent cases before the NTT. The Court, therefore, struck down Section 13, too, as being unconstitutional.

Finally, the Court observed that because it had held Sections 5, 6, 7, 8, and 13 of the NTT Act to be unconstitutional, the remaining provisions would be rendered otiose and meaningless. Therefore, the Court struck down the Act in its entirety.

As stated earlier, Justice RohintonNariman passed a separate and concurring opinion. In essence, Justice Nariman held that it is impermissible for the Legislature to divest superior courts of record, such as, the High Court from their core judicial function of deciding questions of law. Therefore, Justice Nariman, too, in his concurring opinion, held that the NTT Act is unconstitutional.

Conclusion:

The judgment, undoubtedly, has far-reaching implications on the adjudication of tax disputes in the future. Keeping an eye on the advent of the DTC and GST, the government had planned to have a centralized Tribunal that would decide all questions of law arising under both direct and indirect tax enactments. This judgment puts a spanner in the well-intentioned plans of the government.

Importantly, the grounds on which the Supreme Court has struck down the provisions are not easily curable. If the Act had been struck down on mere technicalities, it was likely that the government would have rectified those defects and passed a new law that may have withstood the test of constitutionality. However, it is extremely difficult, nigh impossible, for the Legislature to rectify the defects pointed out by the Supreme Court. Therefore, it appears that the Supreme Court has sounded the final death knell to the idea of the NTT.

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Shuttle Badminton (Single)
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Carrom
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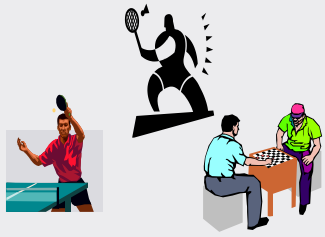

Family Members & Children
Shuttle Badminton (Double)
Chess, Carrom
Singing Competition, Musical Chair
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Rangoli/ Flower Decoration
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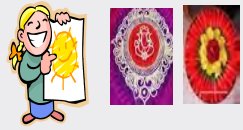

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