KSCAA NEWS BULLETIN

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English Monthly
for Private Circulation only

Are we ready for GST ?

GOODS AND SERVICES TAX

ICAI Elections 2015 - Central & Regional Council

4th & 5th DECEMBER 2015
from 8 AM to 8 PM

Kindly Exercise your right to vote and elect the best Candidate.
Please participate in large numbers.

List of Polling Booths @ page 17

Cricket League

on Sunday, 22nd NOVEMBER 2015

Sports & Talent Meet

on Sunday, 29th NOVEMBER 2015

Details @ page 18

Executive Committee Communique

Dear Professional Colleagues,

We hope you all have enjoyed Diwali vacations thoroughly after an extended tax audit season. This was a much needed break for all the members to rejuvenate themselves and march ahead with new and improved vigor.

The proposed Goods and Services Tax (GST) will be the most important reform in creating a single market in India. GST is very important for the economy and a great step towards improving the country's business ranking. Further to the Government's assurances of rolling out the landmark Goods and Service Tax by 2016, the Ministry of Finance has decided to make available the draft business processes of Goods and Services Tax (GST) on the portal www.mygov.in in order to collect online opinion/suggestions/comments from various stakeholders and public at large. The GST reports that are presently made available are on refund, registration, returns and payment processes. In the wake of this development, ICAI has sought opinions/comments/suggestions from the members on the draft reports of the Joint Committee on the Business Processes of GST. We earnestly request all the members to participate in this consultative process and offer their valuable suggestions and feedback which will help ICAI in putting up a proper response to the Government.

The Government set up a committee on 27th October 2015 for revamping the Income Tax Act, 1961 by simplifying its provisions to reduce litigation and improve doing business in the country. The 10-member committee is headed by Justice R.V. Easwar, a former Delhi High Court judge, will deliberate on the ways to improve the drafting quality of the provisions in order to do away with the ambiguity. The committee comprises of Chartered Accountants, Consultants and Department officials and it will be for a period of one year from the date of its constitution. The Government has assured that the first batch of the Committee's recommendations will be considered in the Union Budget 2015-16.

The Prime Minister launched gold monetization, gold bond scheme and Indian gold coin scheme on 5th November 2015 to cash in on Diwali fervour. The gold monetization scheme is aimed to lure tonnes of the precious metal from Indian households into the main stream banking system. The scheme is aimed at unlocking 22,000 tonnes of the precious metal lying idle in Indian households and temples, estimated at around $800 billion. Also, as part of the gold monetization program, the Prime Minister also launched first-ever 'National Gold Coin' minted in India which will have the National Emblem of Ashok Chakra engraved on one side and Mahatma Gandhi on the other side.

The Ministry of Corporate Affairs vide its General Circular No.14/2015 dated 28th October 2015 has decided to relax the additional fee payable on e-Forms AOC-4, AOC-4 XBRL and MGT-7 and extended the due date to 30th November 2015. We request all the members to educate their corporate clients to make use of this compliance opportunity.

In the Union Budget 2015, a provision was made for levying 2% Swachh Bharat Cess on all or any of the services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purposes relating thereto. The Ministry of Finance vide its notification No.22/2015 – Service Tax dated 6th November 2015 has decided to impose a Swachh Bharat Cess at the rate of 0.5% on all services presently liable to Service Tax with effect from 15th November 2015. Therefore, the effective rate of Service Tax would be 14.50% w.e.f. 15th November 2015. The proceeds from this levy will be utilized by the Central Government exclusively for Swachh Bharat initiatives. Already notified Exempted Services will be excluded from this levy. We request all the members to educate their clients and the trade accordingly.

Association is holding "Sports and Talent Meet and Cricket League" jointly with Bangalore branch of SIRC of ICAI on 22nd and 29th of November 2015. We request all members to take out some time from routine professional life and participate in the games and cultural activities along with family. The details of the program is published elsewhere in the news bulletin.

The elections to ICAI Central and Regional Councils are scheduled to be held on 4th and 5th of December 2015. Voting turnout over the years were generally poor across the regions and poorer in the state of Karnataka especially. Lesser said the better was the scenario in city of Bangalore. Unknowingly, what we had collectively ensured over the years was lack of proper representation from Karnataka in Central and Regional Council. We sincerely hope that we all are matured enough to reverse this trend in this elections and years to come. We once again earnestly request all the members not to forget their fundamental duty towards our mother Institute in electing suitable candidates who can contribute towards growth of our beloved profession. For the sake of convenience, we have published the list of pooling booths in Karnataka elsewhere in the news bulletin.

Always in service of profession,

Executive Committee
Karnataka State Chartered Accountants Association

Workshop on GST jointly with FKCCI, Bengaluru on 31st October 2015

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CONTENTS

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

email: kscaablr@gmail.com

Website: www.kscaa.co.in

Workshop on Tax Deducted at Source (TDS)

Federation of Karnataka Chambers of Commerce & Industry (FKCCI)

in association with

Karnataka State Chartered Accountants Association (KSCAA)

is organizing a Workshop as given below:

Date & Time	**Saturday –21st November 2015** **9.30 a.m. to 1.30 p.m.** **(9 a.m. to 9.30 a.m. - Registration)**
Venue	**FKCCI Cabinet Hall,** K.G. Road, Bangalore-9
PRESENTATIONS:	
Law of TDS (Act, Circulars & Notifications)	**CA. D R Venkatesh**
Forms, Certificates & Compliances under TDS Provisions	**CA. Tarun Kumar**
Judicial Pronouncements under TDS	**CA. Naginchand Khincha**
Interactive session	**Panel of Experts**
Delegate Fee	**Rs.800/- per participant** **Cash/Cheque / D.D in favour of "FKCCI, Bangalore"**

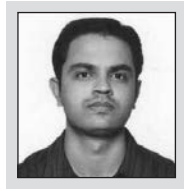
For further clarifications please contact:
Mr. Shama Prasad Pattaje, *Joint Secretary, FKCCI,*
Email : **corporatelaw@fkcci.in,** Mobile : **99860 43959**

Registration will be restricted to 65 participants on first come first serve basis, on receipt of the delegate fee.

We request you to kindly participate in this important and informative Workshop and looking forward for your favorable response.

Tallam R Dwarakanath	**CA N Nityananada**	**CA. T.N. Raghavendra**
President, FKCCI	Chairman, Central Taxes & Corporate Law Committee, FKCCI	Secretary, KSCAA 9880187870

Service Tax Paid under Wrong Registration Number



CA Mahadev.R

Many a times it may so happen that assessee discharges the tax liability under wrong accounting codes or wrong registration numbers. These payments are not intentional. Whether assessee has to opt only for refund? Even if he opts, whether such refunds are sanctioned immediately? A simple clerical mistake of the assessee could take years for refund. We examine the issues and remedy for this briefly in this article.

Use of wrong accounting code

Earlier, there were separate accounting codes for all notified services. After introduction of negative list for taxation of services, only one accounting code and one category was prescribed in June 2012. Later on in November 2012, again all the categories and accounting code for services were reintroduced for registration and tax payment purpose. As there are number of services (120 plus), there could be wrong selection of accounting code for payment of service tax. For example, the service tax paid using code 00440406 for works contract service instead of using code 00440410.

In such cases, the assessee need not worry as there are clarifications and judgments confirming the view that service tax should not be demanded again. (Refer CBEC vide Circular No. 58/7/2003-S.T., dated 20-5-2003) Intimation to the department with complete details should be enough in this case.

Use of wrong registration number

It is easy to convince the department in case of tax payment using wrong accounting code. However, problem arises in case of payment under wrong registration number which mostly happens in case of entities having multiple units with separate service tax or central excise registration.

Mumbai Commissionerate of Service Tax vide trade Notice No. 21/13-14-ST-I dated March 11, 2014 has clarified that in case wrong accounting code used for service tax, then the same may be rectified by intimating the same to the department. Further it has been clarified that in case of use of wrong registration code in case of assessee having multiple service tax codes, adjustment of service tax amount from one service tax code to another code is not possible in the absence of such provision in service tax law. The option of claiming refund of excess tax paid or adjustment of such wrongly paid tax with subsequent liability has been prescribed in the circular.

The refund option is acceptable only if refund mechanism in country is faster, which is not the case. Adjustment of tax payment with subsequent liability would be fine if there is liability. What if the unit whose code has been wrongly used does not have any liability? What if the assessee has used excise registration code instead of service tax registration code or vice versa? The answers are not provided in law or any clarification in this regard. We have answers through few CESTAT judgements wherein the relief has been provided to assessee for technical error in tax payment.

In case of *Tej Control Systems Vs. CCE [2012-TIOL-1356-CESTAT-MUM]*, the tribunal held that the assessee cannot be compelled to pay tax once again for using Central Excise registration number instead of service tax registration number. The relevant paragraph (no.7) of the judgment is reproduced below:

"The issue lies in a narrow compass. The issue is by quoting the service tax registration number in the payment challan, has the appellant committed a irreparable mistake or has the department not received the amount which they demanded. Inasmuch as the department has received the amount due from the appellant quoting of wrong registration number in the concerned challans is only a technical error which can be rectified at the department's end itself. Such demand by the department is perverse and unsustainable in law. Accordingly, I allow the appeal"

Recently the tribunal in case of *Sahara India TV Network Vs. CCE - 2015 (10) TMI 2037 - CESTAT New Delhi* has granted a huge relief for assessees who have paid service tax registration under wrong registration code. It was held that when the assessee is same with two different units with separation registration, the service tax cannot be demanded again. The tribunal also took into consideration the decision of tribunal in case of *Plastichemix Industries vs. CCE Order no.A/11151/2014 dated 27.06.2014* wherein such adjustment was disallowed as there is no provision for such adjustment.

(Contd. on page 11)

KVAT Audit Vs Department Audit

CA G.B. Srikanth Acharaya and CA Annapurna Kabra

While VAT was introduced, it was predicted that there will less procedures and compliance as it is based on self assessment. One of the objects and reasons for introduction of VAT is to make the levy of tax transparent. But practically it is not so as for the same matter, different Authority level officials are issuing the notice and passing the Assessment order. Tax authorities visit the dealer frequently. In addition, different authorities from inspection, investigation, audit, etc visit the business premises for verification of books of accounts. This has caused undue hardship on the dealer who has to provide various books of accounts requested by such authorities. In most of these cases the authorities seek for the same information already sought by another authority. There should be a provision in the Law to restrict such multiple visits by the departmental authorities to avoid duplication of work and trouble to the dealer. In some of the instances even the Assessment orders are passed based on return filed and not based on books of Accounts even though such officials have visited the dealer premises for the verification of books of Accounts. If the application is made for rectification, it is said to file an appeal for the same and deposit 30% of the tax computed by the officers even though the dealer is not liable for the same. The dealers are heavily penalized for non compliance of any of the procedure which is not the intention of the VAT law.

Revenue Authorities can facilitate voluntary compliance by:

- Providing clear explanations of the law, in a form and manner and at a time suitable to taxpayers;
- Establishing arrangements that assist taxpayers meet their obligations at minimal cost and inconvenience;
- Giving accurate responses to taxpayers questions in reasonable periods of time;
- Giving refunds of overpaid taxes in reasonable periods of time; and
- Quickly resolving taxpayers' complaints

Generally the Commercial Tax department comprises of different wings, namely;

1. Audit
2. Investigation
3. Appeals
4. Advance Ruling

1. Audit Wing

Role of proper audit in a revenue collecting department cannot be overemphasized and is critical for ensuring compliance with prevalent rules and procedures. For this purpose, Audit/Enforcement/Intelligence officers are functioning in each Commercial Taxes District / Zone. Audit of assessments is also undertaken independently by the Accountant General periodically.

2. Investigation Wing

During the course of audit if any of the officers find that it is necessary or required to be carried out then the case will be handed over to the Intelligence wing to carry out a detailed investigation and give a report on the same. As this is a unit which is separately established, it carries out the process extensively.

3. Appeals Wing

Any person who has any objections towards any order or proceedings passed against him can appeal to the Appellate authority. The appeal wing stands somewhere midway of court and an administrative body. They are intended to hear and dispose of the statutory appeals against the orders passed.

4. Advance ruling Wing

Advance ruling is defined as "a determination by the authority in relation to a transaction which has been undertaken by a dealer registered under the Act" This is also one of the major initiatives taken by some of the commercial tax departments, wherein any dealer seeking any clarification as to rate of tax in respect of any goods or taxability of a transaction can apply in a form specified for it with the payment of a fee.

Administration of VAT system is not only from Government or the from commercial taxes department but also from the part of the assessee himself. It is so because of the system of assessing of tax prevalent in case of VAT, i.e. Self assessment meaning to say, the assessee should assess his Value Added Tax liability on his own. Self-assessment requires more than simply permitting the taxpayer to make the tax calculations and pay the amount calculated without notification from the tax administration. The concept is based on the understanding that taxpayers are, because of the information known only

to them, best placed to assess their tax liabilities and that the tax authorities' efforts are best directed to identifying those taxpayers most likely to understate their tax liabilities, and focusing their scarce resources on the greatest areas of risk. Thus, the taxpayer effectively takes on responsibility for carrying out the assessment function otherwise carried out by the tax office.

In other words, dealers are responsible for:

- The facts relating to their own financial affairs;
- Interpreting and applying the law to those facts;
- Determining the amount of tax;
- Making that determination with an appropriate degree of finality;
- Filing the return on time;
- Paying the tax owed by the due date and
- ***Filing the Audit Report on time as certified by the Auditor specified in section 31(4) of the KVAT Act***

Section 31(4) of the KVAT Act 2003, states that every dealer whose *'total turnover'* in a year exceeds rupees one Crore shall have his accounts audited by a chartered accountant or a cost Accountant or a Tax Practioner subject to such conditions and such limits as may be prescribed and shall submit to the prescribed authority a copy of the audited statement of accounts and prescribed documents in the prescribed manner.

For K-VAT Purposes audit means scrutiny of the records of assessee and the verification of the actual K-VAT payments and receipts of inputs and capital goods provided with a view to check whether the assessee is paying the K-VAT correctly and following the K-VAT provisions and procedures. Rule 33 provides an elaborate listing of methodology of maintaining accounts and records. Under these circumstances it becomes necessary for the auditors to look into the assessee records under KVAT as well as own records to verify whether he is paying KVAT correctly and following laid down procedures.

The KVAT Audit has various advantages to the Government or to the dealers like it is advantageous to the government by increasing the revenue, lesser cost of administration and collection, check on misclassification of goods to ensure the correct rate of tax and availment of input tax credit is as per law or not. It is beneficial to the Industry as it updates the assessee with respect to exemption, notification, clarification and circulars. After the introduction of VAT, almost all registered dealers will become taxpaying assesses. The assessing officers at their present strength cannot handle the increased assessment work that would result from all dealers becoming assesses under the VAT system. Necessarily there would be a system of self-assessment under which the return filed by all dealers will be accepted as such and the dealers deemed to be assessed on the basis of those returns. The correctness of self-assessment will be checked through a system of audit as conducted by the Auditors.

Generally the basic audit procedures include like verification of sales book, corresponding entries in the stock records should have been made, ensure that rates on which sales have been made are according to price list, sales return should be duly account for and stock should duly adjusted, ensure that goods sent on approval basis, goods sent on consigner are not recorded as sales, tally sales with sales tax returns, reconcile VAT collections with payments and transfer after adjusting the input tax credit, the net balance to appropriate accounts, Check adjustment of input tax by setting off against output tax by relevant journal entries, Check the different classification of sales at different of taxes as per schedule, Check the credit notes issued and reason for issue, Check the tax invoices, bill of sale prepared as per the Provisions of account, tally the monthly figures with the figures shown in the monthly return, Check the purchase invoices and proper classification of purchase is made at different rate of taxes, Purchase returns are accounted correctly, Check whether any stock is transferred to branches within the state and outside the state, Check whether capital goods are purchased, Ensure rebates and discounts have been adjusted properly etc

To prepare a meaningful audit report, the auditor must have sound knowledge of the relevant statutory requirement under the KVAT law. The audit notes and observations must be prepared in a systematic and methodological manner. These audit notes are the basis of drafting the report. These are some errors, which are committed accidentally due to lack of correct knowledge of accounting principles or statutory law. The auditor should use his professional judgment to rectify the accounting principles and statutory law followed by the dealer. Some audit observations require classification to ensure minimum legal requirements and some audit observations require auditor to make a qualification due to infringement of statutory requirements.

As most of the procedures for the VAT has been made electronically like e-returns, e-sugam, e-payments, e-statutory forms, e- registration and e-uploading of data and such electronic procedures has shifted from person dependency to process dependency which should result in drastic changes in working style and process re-engineering by department officials. The department can do electronic cross checks for refund and assessment significantly.

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Recent Decisions of The High Courts on Income Tax

CA K.S. Satish, *Mysore*

NON-RESIDENT

Where the passport of the assessee was unjustifiably impounded by the Central Bureau of Investigation as a result of which he could not leave India and it was finally released on the direction of the Delhi High Court, the assessee was an unwilling resident on Indian soil without his consent and against his will, his involuntary stay in India from the time his passport was impounded till it was released has to be excluded for the purpose of calculating the period of his stay in India under section 6(1)(a) and he has to be treated as a non-resident opined the Delhi High Court in CIT v. Suresh Nanda (2015) 375 ITR 172 (Del).

EXEMPTION UNDER SECTION 10(23C)(via)

In Yash Society v. CCIT & Ors. (2015) 375 ITR 152 (Bom) where the assessee-society running a hospital systematically generated large surplus from its activities which was utilised for acquisition of assets and spent a meagre amount on the weaker sections of the society, the Bombay High Court ruled that the assessee-society was not existing solely for philanthropic purposes and that it was not entitled to approval under section 10(23C)(via).

CAPITAL RECEIPT

Where the assessee-company paid excise duty on goods and materials at the time of setting up a thermal power generation plant and its claim for refund of a part of the excise duty was admitted, since the excise duty paid formed part of the project cost incurred in the pre-commissioning phase of the project, the refund of excise duty would go to reduce the project cost and, therefore, cannot be treated as business income under section 28(iiic) held the Delhi High Court in CIT v. Maithon Power Ltd. (2015) 376 ITR 414 (Del).

BUSINESS INCOME

The Delhi High Court has in Ircon International Ltd. v. DCIT (2015) 278 CTR (Del) 127 taken the view that the gains arising to the assessee-company on account of compensation bonds issued by the Government of India in lieu of debts due from the Government of Iraq constituted trading profits.

SECTION 41(1)

Loan borrowed by the assessee-company from a Russian company during the previous year relevant to the assessment year 1993-94 and shown as such in its books of account forfeited by transferring it to the reserve account during the previous year relevant to the asessment year 1996-97 is not assessable under section 41(1) as it was a loan in the hands of the assessee and not a trade advance opined the Delhi High Court in CIT v. Velocient Technologies Ltd. (2015) 376 ITR 131 (Del).

CAPITAL GAINS

In CIT v. Smt. Mina Deogun (2015) 375 ITR 586 (Cal) where the facts were that the father of the assessee who purchased a residential house on 16.4.1958 died on 29.6.1968, the said house devolved on the mother of the assessee who passed away on 16.9.1999, the assessee and her three sisters succeeded to the house in equal shares and the house was sold during the financial year 2003-04, the Calcutta High Court expresed the view that the long-term capital gain has to be computed by indexing, at the option of the assessee, the fair market value of the house as on 1.4.1981 applying the cost inflation index for the financial year 1981-82 and not the cost inflation index for the financial year 1999-2000 in which she inherited the house.

YEAR OF ASSESSMENT OF UNEXPLAINED INVESTMENT

The Bombay High Court in Ajay R. Dhoot v. DCIT & Ors. (2015) 376 ITR 347 (Bom) where during the course of search in the premises of the assessee on 20.3.1986, a locker key belonging to a person who was staying with him was seized and when the said locker was opened on 28.7.1986, jewellery was found therein part of which valued at Rs. 2,01,200 belonged to the assessee as claimed by him, held that since the assessee was found to be the owner of the jewellery in the financial year 1986-87, the addition of unexplained jewellery under section 69A had to be made in the assessment year 1987-88.

CHAPTER VI-A

Car Park area cannot be included in the built-up area of the residential unit for the purpose of determining the maximum built-up area under section 80-IB(10) opined the Madras High Court in CIT v. Subba Reddy (HUF) (2015) 278 CTR (Mad) 252.

(Contd. on page 11)

State v. Manyata Promoters – A New Twist in the Centum Saga

Vikram A. Huilgol, *Practicing Advocate*

Introduction.

On September 30, 2015, in State of Karnataka v. Manyata Promoters, STRP No. 329/2014, a Division Bench of the Karnataka High Court dismissed the revision petitions filed by the State and held that the assessee, a Special Economic Zone ("SEZ") developer, is entitled for refund of input tax paid on its purchases despite the fact that refund was claimed in returns filed for a tax period that was different from the month in which the purchase invoices were raised. In its judgment, the High Court made some very interesting observations which appear to be in conflict with the findings in the Court's earlier judgment in State of Karnataka v. Centum Industries, 2014 (80) KLJ 65. This article briefly discusses the Court's recent judgment and analyzes whether, and how, the law laid down in Centum Industries can be reconciled with the Court's observations in Manyata Promoters.

Background Facts and Issues.

The assessee was an authorized developer of an SEZ at Rachenahalli, Nagavara Outer Ring Road, Bangalore. In order to develop the SEZ, the assessee had effected several purchases during the tax periods April 2009 to March 2010, and claimed refund of input tax paid on the said purchases under Section 20(2) of the Karnataka Value Added Tax Act, 2003 ("KVAT Act"). The assessing authority proposed to deny the refund of input tax claimed by the assessee on the ground that the refund was claimed in returns filed for a tax period other than the month in which the purchase invoices were raised. It is interesting to note that the proposition notice was raised in March 2011, that is, much prior to the Karnataka High Court's judgment in Centum Industries. Therefore, the assessing authority's proposal to deny input tax credit was an independent decision taken by him and not influenced by the High Court's judgment. The assessee objected to the proposals raised by the assessing authority by contending that the provisions of the KVAT Act do not prescribe any time period within which input tax credit must be taken. The assessing authority, however, passed an order allowing refund of only that amount of input tax which the assessee had claimed as credit in the month in which the purchase invoices were raised.

On August 29, 2012, prior to and, therefore, once again uninfluenced by the Karnataka High Court's judgment in Centum Industries, the first appellate authority partly allowed appeals filed by the assessee against the orders of reassessment and held that the assessee is entitled to refund of input tax claimed in returns filed within a period of 6 months from the tax period in which the purchase invoices were raised. The first appellate authority reasoned that since Section 35(4) of the KVAT Act permitted a dealer to file revised returns within 6 months from the end of the relevant tax period, the assessee should be allowed to avail credit of input tax paid on purchases effected within 6 months prior to the month in which the credit was claimed in its returns. In other words, the first appellate authority held that since the KVAT Act prescribes a period of 6 months from the end of the relevant tax period to revise returns and correct any omissions or misstatements, any delay in claiming input tax credit beyond a period of 6 months from the date on which the purchase invoices were raised cannot be condoned.

Despite getting substantial relief from the first appellate authority, the assessee filed appeals before the Karnataka Appellate Tribunal ("KAT"), which disposed of the said appeals on January 23, 2014, by holding that the KVAT Act did not prescribe any time-limit for availing of input tax credit and, therefore, there was no logic in allowing the assessee to avail credit on only those purchases effected 6 months prior to the tax period for which returns were filed claiming the credit. Here again, the order of the KAT was prior to and, therefore, uninfluenced by the Karnataka High Court's judgment in Centum Industries.

The State challenged the aforesaid order of the KAT before the Karnataka High Court raising, among other things, the following question of law:

> *"Whether in the facts and circumstances of the case the Tribunal is right in giving a finding that there is no time limit prescribed under the Act for claiming input tax and thus, the assessee/respondent is entitled to the claim of input tax claimed beyond 6 months?"*

By the time the State filed the revision petitions, the High Court had already pronounced its judgment in Centum Industries. Therefore, the State contended that this case ought

to be disposed of in light of the observations contained in Centum Industries holding that the Act requires dealers to avail credit of input tax in returns filed for the same month in which the purchase invoices were raised. Accordingly, the State prayed that the Court set aside the KAT's order and disallow any credit and, accordingly, refund of input tax claimed by the assessee in returns filed for a month that was different from the month in which the purchase invoices were raised.

The Judgment.

After noting the rival contentions of the parties, the Court held, in pertinent part as follows:

> *"Nowhere in the Act has it been stated that the input tax credit should be claimed in the month in which the date of the invoice of the supplier/vendor falls or the purchasing dealer has to claim input tax credit in the same period in which the bills have been raised by the selling dealers. A reading of Section 35 makes it very clear that there is no requirement for the purchasing dealers to claim input tax credit in the same month in which the date of the invoice of the supplier of vendor falls. Section 35(1) makes it clear that every registered dealer shall furnish the return in such form and manner, and shall pay the tax due on such return within 20 days or 15 days after the end of the preceding month. Nowhere in the said Section has it been contemplated that the purchasing dealer shall claim input tax in the same month."*

The Court, accordingly, answered the question of law raised in the petition categorically in favour of the assessee by holding that the KVAT Act does not prescribe any time-limit for availing of input tax credit.

Centum Industries v. Manyata Promoters.

One may recollect that in Centum Industries the High Court had held, in pertinent part, as follows:

> "*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."*

In short, as per the Court's judgment, dealers would have to (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), failing which their right to avail input tax credit would be lost.

As stated earlier, the Court, in Manyata Promoters, held that there is no time-limit for availing of input tax credit and, therefore, dealers would be entitled to avail input tax credit in their returns filed for any tax period, irrespective of the month in which the purchase invoices were raised. Therefore, it is clear that the two judgments, both of Division Benches of the Karnataka High Court, are in conflict with each other insofar as they relate to whether the KVAT Act prescribes a time-limit for availing of input tax credit.

The Supreme Court, as well as High Courts across the country including the Karnataka High Court have stressed on the importance of consistency in judgments. The Supreme Court has consistently held that conflicting judgments, particularly those by Benches of equal strength of the same Court, cause considerable confusion in the administration of justice by subordinate courts. In Vijay Lakshmi Sadho v. Jagadish, (2001) 2 SCC 247, the Supreme Court held as follows:

> *"It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of different arguments or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."*

Therefore, the mandate of the Supreme Court is very clear: rather than having two conflicting judgments, thereby creating confusion, the later Bench ought to place the matter before a Larger Bench of the Court for resolution of the issue. The confusion that is bound to ensue in this case is plain to see. The tax authorities and the KAT are now faced with the prospect of deciding whether to follow Centum Industries and disallow any input tax credit that has been availed by a dealer in his returns filed for a tax period other than the month in which the purchase invoices were raised, or follow Manyata Promoters and allow such credit to be availed. Therefore, if the Bench hearing Manyata Promoters was of the opinion that the law laid down in Centum Industries is incorrect, judicial decorum required the Bench to place the matter before a Larger Bench. However, the Court's judgment in Manyata Promoters does not make any reference whatsoever to the High Court's prior judgment in Centum Industries. Therefore, strictly speaking, the Bench did not expressly disagree with the Court's earlier judgment and, thereby, obviated the need to refer the issue to be decided by a larger Bench. However, as a result, we now find ourselves in this precarious situation where there are two

conflicting judgments of the highest court in the State on this vital issue that has an impact on the entire trade and industry.

From a practical standpoint, there is no doubt that the Revenue will apply the law laid down in Centum Industries in order to deny the benefit of belatedly claimed input tax credit, whereas assessees will rely on Manyata Promoters in support of their claim of input tax credit irrespective of the month in which the credit is claimed. Accordingly, there will arise, in the very near future, a situation where the authorities, the Tribunal, and even the High Court would have to decide which of the two judgments of the Division Benches of the High Court would have to be followed. It is, therefore, vital to examine the law of precedents to try and discern an answer as to which of the two conflicting judgments of the Karnataka High Court ought to be applied.

Unfortunately, the Courts have not been consistent when deciding the question of which of two conflicting judgments of Benches of equal strength must be followed by subordinate Courts. There have been three mutually repugnant streams of judgments/precedents on this very important and oft recurring question of law: (1) one view is that in case of conflict between two judgments, the later decision should be followed; (2) the second view says that decision earlier in point of time should be followed; and (3) the third view is that the Court should follow the decision which lays down the more accurate position of law, whether it be earlier or later.

In Sundeep Kumar Bafna v. State of Maharashtra, AIR 2014 SC 1745, the Supreme Court observed as follows:

> *"It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."*

Therefore, according to the Supreme Court's judgment in Sundeep Kumar Bafna, the later of two conflicting decisions of Benches of equal strength is *per incuriam* and, accordingly, must not be followed by subordinate courts. The Supreme Court further clarified that, "a decision or judgment can […] be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger bench." Therefore, based on the above observations of the Supreme Court, it is possible to argue that the judgment in Manyata Promoters, insofar as it holds that there is no time-limit for availing of input tax credit under the KVAT Act, is *per incuriam*and, therefore, must not be applied in deciding future cases. However, practically speaking, it would simply not be possible for authorities constituted under the KVAT Act or the KAT to ignore the judgment of the High Court in Manyata Promoters on the ground that the observations contained therein are *per incuriam*.

On the other hand, there are numerous judgments of the High Courts, including by a Full Bench of the Karnataka High Court, that hold that when there are two conflicting judgments of Benches of equal strength, the later of the two decisions must be followed. In Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd., AIR 1980 Kant. 92, a Full Bench of the Karnataka High Court held that if conflicting judgments are rendered by two Benches of the Supreme Court of equal strength, the later of the two decisions of the Court is binding and must be followed. This view has been adopted by a Full Bench of the Kerala High Court in Joseph v. Special Tahsildar, 2001 (1) KLT 958 and the Bombay High Court in VasantTatobaHargude v. DikkayaMuttayaPujari, AIR 1980 Bom. 341. In Raman Gopi v. Kunju Raman Uthaman, 2011 (4) KLT 654 (SC), a Full Bench of the Kerala High Court followed its earlier decision in Joseph and held that "in a case of conflict between two decisions of Benches of equal strength of Judges of the Apex Court, the decision later in time will be binding." Therefore, reliance can be placed on the above judgments to contend that the observations of the High Court in Centum Industries must be ignored and the Court's judgment in Manyata Promoters must, instead, be applied. Of course, in light of the recent Supreme Court's judgment in Sundeep Kumar Bafna, the judgments of the High Courts may no longer be good law.

Finally, there are Courts that have taken the view that if there are conflicting judgments of Benches of equal strength, the judgment that lays down the correct proposition of law must be followed, irrespective of which of the judgments was rendered earlier or later. When faced with the issue of deciding which of two conflicting decisions of the Supreme Court to follow, a Full Bench of the Punjab and Haryana High Court, in Indo-Swiss Time Ltd. v. Umrao, AIR 1981 P&H 213, succinctly observed as follows:

> *"Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior court are of co-equal benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extent than both of them cannot be binding on the courts below. Inevitably a choice though a difficult one has to be made in such a situation. On*

principles, it appears to me that the high Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant."

The above view has also been adopted by a Full Bench of the Patna High Court in Amar Singh Yadav v. Shanti Devi, AIR 1987 Pat. 191. However, applying this line of judgments would result in even more confusion because the VAT authorities would have complete discretion to apply and ignore either judgment of the Karnataka High Court based entirely on what they feel is the correct position of law.

Conclusion.

In view of the above discussion, it is clear that there is no definite answer to the question as to which of two conflicting judgments of a superior court is to be followed by subordinate courts and authorities. The clearly conflicting judgments in Centum Industries and Manyata Promoters is, undoubtedly, going to add to the considerable confusion that was already prevalent in the industry. In my opinion, the Revenue will simply side-step the Court's judgment in Manyata Promoters by stating that the Court decided the issue specifically with regard to SEZ developers and that the judgment cannot be applied to dealers who are not claiming refund under Section 20(2) of the KVAT Act. However, such a position would not be correct, as a reading of the judgment would make it clear that the question framed by the Court and subsequently answered in favour of the assessee was not restricted to whether the Act prescribes any time-limit for claiming refund of input tax credit under Section 20(2). Instead, the question framed was far wider in scope and the Court categorically answered the question by holding that the KVAT Act does not prescribe any time-limit for claiming of input tax credit.

Of course, in view of the amendment to Section 10(3) to the KVAT Act vide the KVAT Amendment Act, 2015, a time-limit has now been prescribed under the Act. However, for the period prior to April 1, 2015, it will be interesting to see how the two conflicting judgments of the Karnataka High Court will be reconciled.

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Recent Decisions of The High Courts on Income Tax

(Contd. from page 7)

TRIBUNAL

The Delhi High Court in Pepsi Foods P. Ltd. v. ACIT &. Anr. (2015) 376 ITR 87 (Del) while striking down the expression " even if the delay in disposing of the appeal is not attributable to the assessee " inserted in the third proviso to section 254(2A) by the Finance Act, 2008 as being violative of article 14 of the Constitution of India, ruled that the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases where the delay in disposing of the appeal is not attributable to the assessee.

TAX DEDUCTION AT SOURCE

In Hutchison Telecom East Ltd. v. CIT (2015) 375 ITR 566 (Cal) where the terms and conditions of the agreement between the assessee and the service provider indicated that the latter had been employed to act on behalf of the assessee for the purpose of feeding the retailers and through them sell the services to the consumers and the relationship between the assessee and the service provider was that of a principal and agent, the Calcutta High Court has taken the view that the discount allowed by the assessee to the service provider in respect of starter packs and recharge coupous for its prepaid service constituted commission and that the assessee was liable to deduct tax at source thereon under section 194H.

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Service Tax Paid under Wrong Registration Number

(Contd. from page 4)

The tribunal in Sahara India case differentiated the decision of Plastichemix stating that though there is no provision for adjustment, there is even no provision restricting such adjustment. The decision is very logical and practical as such adjustment would not result in any loss to the exchequer.

Conclusion: The tax payer shall take due care while remitting the taxes. He shall ensure that proper accounting codes and registration numbers are used for payment as any mistake could lead to unwarranted litigation with the department. Assessee, who has already used wrong registration number for tax payment, could rely on the tribunal decision as of now.

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Indirect Taxes Update – Oct 2015

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

FOR THE MONTH OF OCTOBER 2015:

A. Notifications and Circulars

a) *Circulars*

i) Classification of Coconut Oil packed in small containers

CBEC vide its order dated 03.06.2009 had clarified that the coconut oil packed in small pouches shall be classified as hair oil under the heading 3305.

In view of the dismissal of civil appeals by Supreme Court, filed by department against the orders of the CESTAT classifying the edible coconut oil packed in small pouches under heading CET 1513, the CBEC has withdrawn the above order vide Circular No. 1007/14/2015 CX dt. 12.10.2015

ii) Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG)

In view of the decision of the Supreme Court in the case of M/s Gemini Instratech Vs Commissioner of Central Excise, Nashik, holding that windmill doors or tower doors qualify as part or accessory of windmill and clarifications issued by Ministry of New and Renewable Energy, CBEC Vide Circular No. 1008/15/2015-CX dt. 20.10.2015 has clarified that Tower, Nacelle, Rotor, wind turbine controller, nacelle controller and control cables are considered to be parts or accessories of WOEG eligible for exemption.

iii) Guidelines for launching of Prosecution under the Central Excise Act, 1944 and Finance Act, 1994

CBEC Vide Circular No. 1009/16/2015-CX dt. 23.10.2015 has prescribed detailed guidelines for launching prosecution under Central Excise and Service tax provisions against tax evaders. Brief summary of the guidelines is as below:

a. Monetary Limit: it is prescribed that the prosecution shall be initiated where tax evaded is equal to or more than Rs. 1 crore. However, the above limits may not be applicable to habitual offenders

b. The criminal complaint for prosecuting a person should be filed only after obtaining the sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax / Principal Director General/ Director General, CEI. as the case may be.

c. The circular prescribes a detailed procedure for sanction of prosecution and monitoring of such prosecution.

d. Further, circular also provides for procedure for withdrawal of prosecution.

iv) Self-sealing and self-Examination of Bulk cargo

Notification No.42/2001-Central Excise (N.T.), dated 26.06.2001, which details conditions and procedure for export of goods without payment of duty has been amended vide Notification No. 23/2015, dated 30.10.2015 thereby exempting bulk cargo from sealing in packages or container. The Principal Chief Commissioner/ Chief Commissioner of Central Excise has been empowered to grant exemption from self-sealing of bulk cargo for export on case to case basis

CBEC vide circular No. 1011/18/2015-CX., Dated: October 30, 2015 has detailed the procedure for availing the benefit of exemption from packing and sealing.

b) *Notifications*

i) Retrospective exemption to services in relation to remittance of money from outside India to India

In terms of Section 11C of the Central Excise Act, 1944 as made applicable to Finance Act, 1994, Central Government has exempted the Service Tax payable under Section 66B of the Finance Act, 1994, on the service provided by an Indian Bank or other entity acting as an agent to the Money Transfer Service Operators (MTSO) in relation to remittance of foreign currency from outside India to India, in the period from 1.7.2012 to 13.10.2014.

[Source: Notification No. 19/2015-ST, Dt. 14.10.2015]

ii) Amendment Notification NO. 25/2012-ST

a) Exemption to Services provided in relation to Pradhan Mantri Jan Dhan Yojana:

i. Entry 29(g) of Notification No. 25/2012-ST Dt. 20.06.2012: provide exemption to services provided by business facilitator or a business correspondent to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by

way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding.

For this purpose Basic Savings Bank Deposit Account has been defined as Basic Savings Bank Deposit Account opened under the guidelines issued by Reserve Bank of India relating thereto;"

ii. Entry 29(ga) provides exemption services by any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (g)

iii. Entry 29(gb) provides exemption to services by a business facilitator or a business correspondent to an insurance company in a rural area; "

b) Exemption to Yoga:

Entry No. 4 of Notification No.25/2012 ST provides for exemption to certain services provided by an entity registered under Section 12AA of Income Tax Act, 1961. Definition of Charitable activities earlier included services in relation to advancement of religion or spirituality.

Vide Notification dated 21.10.2015, for the words 'religion or spirituality' the words 'religion, spirituality or yoga'" has been substituted.

Therefore, services in relation to yoga provided by a entity registered under 12AA of Income Tax Act, 1961 would also be exempted from service tax.

[Source: Notification No. 20/2015-ST, Dated 21.10.2015]

iii) Swachh Bharat Cess

Swachh Bharat Cess which was introduced in Finance Act, 2015 has been notified effective from November 15, 2015. New Cess is made applicable to all taxable services and though the Finance Act, 2015 provides for levy of Cess at the rate of 2%, the effective rate is reduced to 0.5% cess on the value of services.

With the introduction of Swachh Bharath Cess, the effective rate of service tax would be 14.50% w.e.f. 15.11.2015.

[Source: Notification No. 21-22/2015-ST, Dt 6.11.2015]

iv) Cenvat Credit of Education cess and Secondary and Higher Education Cess:

Cenvat Credit of Education cess and Secondary and Higher Education Cess on inputs or capital goods or input services received by the service provider on or after the 1st day of June, 2015 and balance 50% of such credit on capital goods received in the financial year 2014-15, could be utilised for payment of service tax.

[Source: Notification No. 22/2015-CE (NT), Dt 29.10.2015]

B. Important Decisions

1. L&T Vs. CCE Hyderabad, 2015-TIOL-236-SC-CX

Issue: Issue before the Hon'ble Supreme Court was whether Ready Mix Concrete(RMC) and Concrete Mix (CM) are both different products or same products and whether RMC would be eligible for exemption under Notification No. 4/1997 CE Dt.1.3.1997

Held: 'Ready Mix Concrete' (RMC) and Concrete Mix (CM) are two different products. it is the process of mixing the concrete that differentiates between the two. In the present case, as it is found, that the assessee installed equipment and machinery to prepare and produce RMC. Notification No. 4 dated March 01, 1997 exempts only 'Concrete Mix' and not 'Ready Made Mixed Concrete' and RMC is not the same as CM. The Court further observed that, even if there is a doubt about the fact whether both are same or different, which was even accepted by the assessee, since the issues is about dealing with the interpretation of exemption notification and the same has to be interpreted in strict manner and in case of doubt, benefit has to be given to the Revenue.

2. CCE Vs. M/s NEBULAE HEALTH CARE LTD
2015-TIOL-261-SC-CX

Issue: Issue before the Hon'ble Supreme Court was whether an Assessee could simultaneously claim SSI benefit for the own products and pay duty for the goods bearing others brand name manufactured by him.

Held: Hon'ble Supreme Court allowing the benefit observed that there is no dispute that the assessee fulfils all the conditions for SSI benefit, so far as his own goods are concerned. Further, as regards the goods manufactured by him under brand name of others, the same shall be treated as differently and normal provisions of the central excise law shall be applied and in terms of the same, assessee is liable to pay duty and once he is liable to pay, he would also be eligible for credit of duties paid on inputs.

3. M/s SPENTEX INDUSTRIES LTD Vs CCE
2015-TIOL-239-SC-CX

Facts: Assessee was engaged in the manufacturing of polyester cotton blended yarn and polyester viscose blended yarn. For manufacture of the aforesaid product, the assessee had used the raw material which was an intermediate product and paid excise duty thereupon. The final products were also cleared on payment of excise duty on those finished products. The assessee had exported these goods on payment of central excise duty in the CENVAT account.

Issue in question: Whether the manufacturer/exporter is entitled to rebate of the excise duty paid both on the inputs and on the manufactured product, when excise duty is paid on a manufactured product and also on the inputs which have gone into manufacturing the product and such manufactured product is exported.

Held: Supreme Court interpreting the provisions of Rule 18 of Central Excise Rules, 2002, the Supreme Court held that the rules stipulates that the Central Government may, by notification, grant rebate of duty paid on such excisable goods OR duty paid on material used in the manufacturing or processing of such goods. Keeping in mind the scheme of the Government, it cannot be the intention of the Legislature to provide rebate only on one item in case a particular exporter/manufacturer opts for other alternative under Rule 18, namely, paying the duty in the first instance and then claiming the rebate. Giving such restrictive meaning to Rule 18 would not only be anomalous but would lead to absurdity as well. In fact, it would defeat the very purpose of grant of remission from payment of excise duty in respect of the goods which are exported out of India. It may also lead to invidious discrimination and arbitrary results.

4. CCE Vs. Fitrite Packers, 2015(324) ELT 625(S.C.)

Facts: The respondent/assessee herein purchased GI paper from the market which is already duty paid base paper. On this paper, the process of printing is carried out by the assessee according to the design and specifications of the customers depending on their requirements and delivered to the customer.

Issue: Whether printing on duty paid GI paper would amount to manufacture?

Held: The Hon'ble Supreme Court held that the blank paper could be used as wrapper for any kind of product, however, after the printing of logo and name of the specific product thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but the product has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. Therefore, Supreme Court held that the process of printing amounts to manufacture.

5. CCE Vs. Ispat Industries Ltd. 2015(324) ELT 670(S.C)

Facts: The assessee sold goods on ex-works price basis and Goods were cleared from the factory on payment of the appropriate sales tax by the assessee itself, thereby indicating that it had sold the goods manufactured by it at the factory gate. Invoices were prepared only at the factory directly in the name of the customer in which the name of the Insurance Company as well as the number of the transit Insurance Policy were mentioned. However, based on the fact that insurance policy was taken by the manufacturer in his name for transit insurance, the department entertained a view that the freight and insurance till place of delivery shall be included in the value.

Held: The Hon'ble Supreme Court observed that insurance of goods during transit cannot possibly be the sole consideration to decide ownership or the point of sale of goods. Further, definition of place of removal in Section 4 of Central Excise Act, 1944, covers only the factory premises or the warehouse as place of removal. Buyer's place is not considered to be place of removal and therefore, considering the above, the cost of freight and insurance relating to post removal cannot added.

6. M/s FUTURE GAMING AND HOTEL SERVICES (PVT) LTD Vs. UNION OF INDIA, 2015-TIOL-2398-HC-SIKKIM –ST

Facts: The Petitioner procures the lottery tickets in bulk from the Government and resells the same to the public at large through various agents, stockists, resellers. The petitioner challenged the provisions of Finance Act, 2015 relating to amendments to service tax provisions covering levy of service tax on the marketing and sale of lottery tickets. New explanation was inserted in the definition of service to provide that services by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner made liable to service tax.

Held: Based on the interpretation of the statutory provisions as well as the provisions of constitution, the High Court inter alia held that:

(i) Buying and selling of the lottery tickets does not amount to rendering service to the State and, therefore, their activity does not fall within the meaning of 'service' as provided under Clauses (31A) and (44) of Section 65B and, therefore, outside the purview of Explanation 2 to the said Section;

(ii) since by the Explanation the scope of Section 66D which is the main provision which is to be expanded, it would be ultra vires the Finance Act, 1994 and is accordingly struck down;

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Management of Co-operative Society and Audit Engagement – Fraud and Audit Risk under the Karnataka Co-operative Societies Act, 1959

CA G. Sathyanarayana

(Continued from previous issue)

In the most of the frauds in a co-operative society it is committed on account of insufficient management strength or lack of financial and business knowledge of the people in charge of governance and crowdedness of the fraudsters. The frauds are committed through collusion also.

Illustration list of areas where fraud can creep in:

Area	Possibility of fraud	Persons involved in governance
Inventories	Theft, pilferage, adulteration	Store Keeper, godown in-charge, weighbridge operator
Sales and Receivables	Underinvoicing, not recording the collections, delay in accounting	Salesman, cashier
Share collection	not recording the collections, delay in accounting	Secretary, cashier
Advances disbursements and repayments	Fictitious advances, not recording the collections, delay in accounting, fictitious cash entries	Secreatry, cashier, accountant, director in-charge of collection
Awarding contracts	Kickbacks, inflating the value	Directors, Secretary, Site supervisor/ engineer
Inflating the expenses	Dummy bills, excess payments, duplicate payments	Cashier, secretary, directors, accountant
Financial Statements	Mis statement, window dressing, profit manipulation	Directors, Secretary, CEO, Accountant,
Cash and Bank Balances	Fictitious entries, dummy vouchers, misuse of cheque books	Cashier, Secretary
In operative accounts	Misuse of opening balances	Cashier, Secretary, Accountant

Detecting or mitigating Fraud

Generally, it is management's responsibility to design internal controls to prevent, detect, and mitigate fraud. Prevention is better than cure. The management of the co-operative society may implement internal audit system to review the controls and functioning of the systems on periodical basis depending on the size and nature of the business of the society. The act provides for various responsibilities on the Board members, president and secretary / CEO. T**he internal auditors play a variety of consulting, assurance, collaborative, advisory, oversight and investigative roles in an organization's fraud management process."**

This is because fraud negatively impacts organizations in many ways — financially, reputational, and through psychological and social implications — hence, it is important for organizations to have a strong fraud management program that includes awareness, prevention and detection, as well as a fraud risk assessment process to identify risks within the organization.

Internal Audit helps organisations through its various processes such as internal control techniques, cross checking, data sampling and various other methodologies to mitigate the risk of fraud and also detect the same.

Routes to fraud/misappropriation:

- If recording is not done, one might show that the **sale has been booked at a higher rate to inflate revenue,** keep the additional inflated amount outstanding in the debtors account and write it off after years showing non-realization.
- Unsecured loan or advance being given to the same party to whom the sale has been made – loan to the extent of the inflated amount. (These are usually related party transactions to inflate revenue)

Detection:

- Cross verify the rate of sale from the recording with the rate of the exchange, where the commodity is listed as on that date.
- Special emphasis should be put on related party transactions.
- Special checking of transactions during the time the recording system was inoperative – High value, related party transactions.

"Whether the entity has entered into any transaction with these related parties during the period and, if so, the nature and extent, and the purpose of the transaction"

Entering transactions at Back Date. When the volume of transactions is huge, it is very difficult to trace back dated entries, which might be fake.

Routes to fraud/misappropriation:

As per accounting convention, all entries were to be made at current dates except for month end transactions. However, it was observed that back dated entries were being made in the system.

Example: This was evident from the fact that BRS when prepared for the month of December, 2012, as on 31/12/2012 showed a balance of say, Rs. 15,193,794.15 and when prepared for the same month, as on 08/01/2013 shows a balance of say, Rs. 3,93,794.15/-. This clearly depicts that payment vouchers were entered during the period between 31/12/2012 and 08/01/2013.

Detection:

- Check year end/ quarter end high volume or low volume transactions. (In many cases, high value payments are segregated into numerous low value vouchers so as to escape being noticed even if entered in the system at a back date)
- Unusual entries of earlier years after the audit is closed.
- Generate system reports to find out the date of making the voucher, date of payment and date of entry in the system.

Preventive Controls: Proper authorization, Segregation of duties.

Detective Controls: Variance Analysis, Reconciliation.

Miscellaneous cases:

- Whether huge back dated entries have been made manually, due to system not in operation.
- Whether original documents (FD's, BG's, Bank Statements, etc) are made available for verification and confirmations from all the Banks and third parties is obtained.
- Whether manual challans are compulsorily issued in cases, where system generated challans are prevalent. No delivery is executed without issue of challan.
- In cases, where stock is sold against BG, LC, SBLC's, whether the top management is ensuring that such BG's and SBLC's are at par with the market value of the stock.
- Cross verification of Daily Business Intelligence Reports/MIS Reports (containing the daily position of stock purchased and sold).
- Whether there is proper control over delivery and stock of inventory – especially in case of high value items. For example: delivery of stock to be made only after getting confirmation of receipt of money. In most cases, the same is not complied with, leading to high risk.

SYMPTOMS OF FRAUD

While conducting audit, besides following the audit guidelines, procedures, standards and policies, the auditors should be vigilant and alert in comprehending the atmosphere or culture of the society and the attitude of the employees at the staff as well as the managerial level so as to be able to detect tendencies of fraud or misappropriation at the initial level.

SYMPTOMS – at the Organisation level

- Lack of accountability
- Shifting of Responsibility
- Unnecessary delay /procrastination in producing documents
- Huge expenditure of personal nature split over different accounts/ non-segregation of duties
- One Upmanship – One person in charge of the whole department
- Huge year end expenditure/revenue inconsistent with the average expense/income throughout the year
- Physical security of documents not present
- Faulty HR mechanism recruiting employees (without authorized proof of identity).

PSYCHOLOGICAL/BEHAVIORAL SYMPTOMS (at the level of an individual)

- Overconfidence and overtly smart behaviour
- Blaming others more
- Most of the times not available for the auditor/investigator
- Overtly sweet and generous
- Breaking Office discipline
- Weak allocation of responsibilities and confiding most of the work/documents to himself.

Reporting of fraud:

The auditor has to report fraud in a co operative society as per the provisions of the section 63 sub-section 17 of the Karnataka Co-operative Societies Act, 1959. While framing the report of fraud the auditor may follow the guidelines issued by the Institute of Chartered Accountants of India and the department of Co-operative audit. The fraud has to be reported in a separate annexure highlighting from the index of audit report. A suitable qualification in the audit report may be inserted in the audit report. The auditor has to report the fraud or irregularities as under;

(i) All particulars of the defects or the irregularities observed in audit.

(ii) In case of financial irregularities and misappropriation or embezzlement of funds or fraud, the auditor/auditing firm shall investigate in detail about the fraud

(iii) Report the *modus operandi*, the entrustment, amount involved, and fix the responsibility for such misappropriation or embezzlement of funds or fraud, on the members of the board or the employees of the society or any other person as the case may be with all necessary evidence;

(iv) Accounting irregularities and their implications on the financial statements to be indicated in detail in the report with the corresponding effect on the profit and loss;

(v) The functioning of the general body, the board and sub committees of the co-operative society to be checked and any irregularities or violations observed shall be reported duly fixing the responsibilities for such irregularities or violations;

Conclusion:

Since the co-operative societies are more prone to fraud, it is the responsibility of auditor of a co-operative society to be vigilant in discharging his duties. If he identified fraud or suspects fraud, the same may be communicated to appropriate level of management and those charged with governance including the regulatory/enforcement authorities. While investigating and reporting the fraud he has to issue summons/notices, conduct personal hearing before reporting under section 63 (17) the name of any person who has committed fraud and collect all evidences in support of his report. The auditor also responsible under section 197 of the Indian Penal Code , if any person including auditor issues or signs a certificate required by law to be given or signed knowing or believing that such certificate is false , then he is punishable.

Also, the audit report will consist of

- The answers to questions in the prescribed booklet
- Audit remarks including report about misappropriations
- A defect sheet containing individual irregularities which are to be rectified

The audit report should be a self contained report including the items of the fraud or misappropriations if any. Suitable guidelines to be given to all audit staff to identify the irregularities and fraud. While forwarding the report to Co-operative department, the auditor should invite special attention (Pink Sheet) of the frauds or misappropriations.

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LIST OF POLLING BOOTHS IN KARNATAKA

BANGALORE		
S-009 to S-015 The Institute of Chartered Accountants of India ICAI Bhawan No.16/O, Millers' Tank Bed Area, BENGALURU – 560 052	**S-016 to S-017** BHS Higher Education Society 35/1, 11th Main, 4th Block Jayanagar BENGALURU - 560 011	**S-018 to S-019** St. John Medical College Sarjapur Road Opp. BDA Complex Koramangala BENGALURU - 560 034
OTHER PARTS OF KARNATAKA		
S-006 **BAGALKOT** Income Tax Office AaykarBhavan Sector No.24, Navanagar BAGALKOT - 587 103	**S-007** **BALLARI** Income tax Office, Aayakar Bhavan, ASK, Ground Floor Staff Road, Fort BALLARI - 583 102	**S-008** **BELAGAVI** Income Tax Office Room No.3, First Floor, BELAGAVI - 590 001
S-043 **DAVANGERE** R.L. Law College P.J. Extension DAVANGERE – 577 002	**S-044** **DHARWAD** C.S.I. College of Commerce DHARWAD – 580 001	**S-049** **HOSAPETE** Income Tax Office, AayakarBhavan, ASK, Ground Floor, M.J. Nagar, T.B. Dam Road HOSAPETE – 583 201
S-050 **HASSAN** Income Tax Office AayakarBhavan, Vijayanagara – II Stage, Belur Road HASSAN – 573 201	**S-052** **HUBBALLI** Income Tax Office Central Revenue Building P.B. Road, Navanagar HUBBALLI – 580 025	**S-062** **KALABURAGI** Income Tax Office AayakarBhavan Sedam Road, Jaya Nagar KALABURAGI (Gulgarba) – 585 105
S-082 **MANGALURU** St. Aloysius College (Autonomous) Light House Hill Road MANGALURU – 575 003	**S-085** **MYSURU** Income Tax Office No.55/1, "Shilpashree Building" Vidhyaranya Complex Vishveshwaranagar MYSURU – 570 008	**S-102** **RAICHUR** Income tax Office Udayanagar, Station Road RAICHUR – 585 101
S-106 **SHIVAMOGGA** Income Tax Office Ground Floor, No.75 100ft. Road, Gopala Gowda Extension SHIVAMOGGA – 577 201	**S-108** **SIRSI** Income tax Office Kamat Plaza, 2nd Floor TSS Road SIRSI – 581 402 (Uttara Kannada)	**S-127** **TUMAKURU** Income Tax Office AayakarBhawan, Ramakrishna Nagar, Kunigal Road TUMAKURU – 572 105
S-130 **UDUPI** Income tax Office AayakarBhawan 2nd Floor, Conference Hall UDUPI – 576 103		

Karnataka State Chartered Accountants Association *Organises,*

Jointly with Bangalore Branch of SIRC of ICAI

SPORTS AND TALENT MEET

On **29th November 2015, Sunday** Timings : **9:00 am - 6:00 pm**

Venue: **KGS Club** (opp to MS Bldg) Cubbon park, Bengaluru.

Events CA'S

Shuttle Badminton (Single)
Shuttle Badminton (Double)
Chess
Table Tennis (Single)
Carrom
Tennis

Family Members & Children

Shuttle Badminton (Double)
Chess, Carrom
Singing Competition, Musical Chair
Drawing Competition for Children
Rangoli/ Flower Decoration
Instumental / Dance

Events Fees: For CA's : ₹ **100/-** *For Each Event,* Family Members & Children : ₹ **50/-** *For Each Event*

Registration closes on 21st November 2015.

CRICKET LEAGUE

Date : **22nd November 2015, Sunday**
Time : **8:00 am – 6:00 pm**
Venue : **Bangalore University Ground**
Fees : ₹ **3000/-** *Per Team*

Tournament Format
8 to 10 Overs per side,
Tennis Ball
Restricted to 10 Teams only.

Registration closes on 17th November 2015.

Participants are requested to contact & send their details to
KSCAA office: Tel - **080-22222155, 22274679**, Email: **kscaablr@gmail.com**
Ms. Geetanjali - 080-30563500 / 513, Email: **blrregistration@icai.org**

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