KSCAA

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

32nd KSCAA 2020 Annual Conference

Since 1957

anavarata

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CONVERGENCE
- Creating Impact Together

6th & 7th March 2020
Friday & Saturday

Bunts Sangha Auditorium
Attiguppe Metro Station, Chord Road,
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From the President

Dear Professional friends,

Let me begin the message for the month by congratulating our new President CA. Atul Kumar Gupta, on he assuming the highest chair of office in ICAI and his raising would bring us the choicest of celebration to ICAI and its members. Last month results have brought in lot of smiles to new made CAs and my best wishes to them and their career ahead. KSCAA is trying to outreach such young members in its drive to galvanise membership to the association. Somewhere, the number of new members entrants is extensively low compared to the total number of members in the region, we probably may have to dwell it appropriately to attract more young membership to the association.

The Annual Conference 'Anavarata' topics are cherry picked in the background of its relevance today and tomorrow. Many in the drawing room believe and resonate the thought that tomorrow is more challenging than today and we have adhered to drift from traditional topics to a slightly upcoming areas of practice.

News Roundup

Goods and Service Tax

Honourable FM Smt. Nirmala Sitharaman during her presentation of first budget of the current decade lauded the efforts of all stakeholders on various achievements in GST law implementation like buoyant tax collections, efficiency in the logistics, reductions in the overall monthly expense bill of families, etc. She also emphasised on the forthcoming processes of e-invoicing, new return forms, etc. which are expected to be live from 1st April 2020. The flurry of intimations and advisories have started flowing in from the department throwing variety of challenges to our fellow members. I'm sure our members are well positioned and well equipped to take on with these challenges head on.

Corporate and Business Law

As part of Government of India's ease of doing business initiatives, the Ministry of Corporate Affairs would be shortly notifying and deploying a new Web Form christened 'SPICe+' replacing the existing SPICe form. This would be an integrated form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, GSTIN, opening of bank account etc., Once notified, all new name reservations for new companies as well as new incorporations shall be applied through SPICe+ only. This could reduce the burden of filing various forms for different registrations and also time taken to obtain various registrations.

MCA has placed a consultation paper to examine the existing provisions of law and make suitable amendments therein to enhance audit independence and accountability. This paper is placed in the Ministry's website to invite suggestions/comments on the consultation paper. MCA has sought for suggestions/ comments on this consultation paper along with justification in brief. The comments/ suggestions may be sent latest by 28th February, 2020 through email at audit.policy@mca.gov.in. Name, telephone number and address of the sender are required to indicated in the e-mail while sending the suggestions/comments. It is a good opportunity for the professionals to suggest the changes in the draft consultation paper and highlight the changes required which would help the industry.

Direct Tax

- CBDT has released Circular which explains provisions related to TDS on Salary under Section 192 of Income Tax Act, 1961 applicable for A.Y. 2020-21 or F.Y. 2019-20. Circular also explains taxation of different components of Salary, Tax Treatment of Allowances, Perquisites, Retirement benefits etc.
- CBDT vide Income Tax has released Format of Revised Form Sahaj (ITR-1) and Sugam (ITR-4) as applicable for Assessment Year 2020-2021 and also added a new proviso to Income Tax Rule 12 and provided who cannot file Form Sahaj (ITR-1) and Sugam (ITR-4) for A.Y. 2020-21.
- Deduction of TDS in respect of Cash Withdrawal above Rs. 1 Crore by an account holder of National Savings Schemes.
- Exemptions and Deductions Foregone to opt for optional scheme- LTC, HRA, some of the allowances as per Sec 10(14), Standard Deduction (u/s 16), Allowance to MP/MLA Sec – 10(17), Allowance for income of minor, Sec – 10AA (SEZ) Exemption, , Interest on house property for self-occupied or vacant property/Loss under the head HP, Additional Depreciation, Deductions u/s 35, 35AD, 35CCC, Deduction from family pension u/s 57, Deductions under Chapter VIA (except Sec – 80CCD and 80JJAA).
- Increase of Limit under 44AB – Prescribed Limit of Turnover of a Business for applicability of Section 44AB has been increased from 1 Crore to 5 Crores only on the fulfilment of the condition that the Aggregate of Receipts and Aggregate of Payments in cash during the previous year does not exceed 5% of such Receipts and such Payments respectively. In other cases the limits remains of Rs. 1 Crore only.
- Section 115BAD – Tax on income of certain resident Co-operative Societies– This section provides an option to resident co-operative societies to compute their income tax payable at the rate of 22% from the Financial Year 2020-21. To avail this option the income of Co-operative Societies shall be calculated without giving effect to the exemptions/ deductions as mentioned in Sec 115BAA.
- Section 115JD – Tax credit for Alternate Minimum Tax– The provision of this act is not applicable to those person who has opted to exercise the option to pay the tax under the new tax scheme i.e. U/S 115BAC, U/S 115BAD.
- Due Date of Corporate Tax Return – In order to enable pre filling of data in income tax return from tax audit it is proposed to amend the Sec 139(1) providing 31st October as due date for filing return instead of 30th September.
- Section 115-O: Dividend distribution tax (DDT) would not apply from 1st day of April, 2020. Dividend income will be taxed in the hands of shareholders only.
- Section 80M is being reintroduced in respect to deduction of certain inter-corporate dividends.

Conclusion

I read an interesting phrase from Rig Veda, which is 'Aano bhadra krtavo yantu vishwatah', meaning let the noble thought come to us from all the directions. Emphasising that the thought and knowledge is an ever-flowing river which can't rest at some point or some time and as human we need to be open to accept knowledge from all sides. Knowledge alike river would continuously flow and would take form and phases by time, and as a professional especially in todays world, this is very apt that knowledge and all the forms of knowledge is very important.

My Wishes to you all for a great learning and enriching experience.

Yours Sincerely,

CA. Chandrashekara Shetty
President

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Search and Seizure – Assessemnt of Third Persion - The Income Tax Act 1961

CA. S Krishnaswamy

- A special provision to assess third person other than the person searched.
- Notice must be issued by the Jurisdictional Officer after recording satisfaction of Statement of income.
- Evidence of identity of the person.
- Limitation
- Assessment must be based on incriminating material found at the time of search.

The case of search and seizure if at the time of search any incriminating material is found in respect of any other person other than the person searched then a special provision Sec.153C is prescribed to initiate action against search person. The requirement of the Section has non-obstante clause stating that notwithstanding the provision of 148, 149, 151 and 153 (re-opening). In such a case a notice shall be issued under the section. The fourth proviso specifies the condition. The conditions are –

> "then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is **satisfied** that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:"

The essential condition is there should be **incriminating material resulting in seizure or requisitioning of books of account or documents or assets** which belonged to a person other than the person referred to in Section 153A.

Recording satisfaction:

Section 153C (1) mandates that the assessment on third person can be done only if the Assessing Officer is satisfied. Such satisfaction shall be **recorded in writing**.

In **PCIT vs Himanshu Chandulal Patel (2019) 419 ITR 132 (Guj)** it was held dismissing the appeal that there was no good reason to interfere with the concurrent findings recorded by the two appellate authorities as regards the satisfaction arrived at the Assessing Officer without there being any cogent or tangible material. In the documents seized during the course of search, there might be some reference to the assessee, but that itself would not be sufficient. It was necessary to show some nexus on the basis of some cogent materials between the documents seized and the assessee. Having regard to the materials on record, if the CIT(A) and the ITAT relied upon the decision in **M/s. Pepsi Foods P Ltd v ACIT (2014) 367 ITR 112 (Delhi)** no error was committed in taking the view that there was no cogent material for arriving at the substantive satisfaction by Assessing Officer. Satisfaction must be recorded otherwise Assessing Officer cannot initiate the proceedings.

Earlier the Tribunal held –

"…..where there was no reason recorded by the Assessing Officer why the seized documents belonged to the assessee and not to the person from whom they were found, that the satisfaction note did not contain basis for his conclusion, and was not in accordance with law for invoking jurisdiction u/s 153C."

In **Pepsico India Holdings Private Limited V. ACIT and another' – 2014 (8) TMI 898 – Delhi High Court** held that the condition precedent for the assessment of third person is recording the satisfaction of the Assessing Officer that seized material was belonged to third person. There is no indication in the satisfaction note that documents are belonged to third person. There is not disclaimer by person in respect of whom search was conducted that the documents did not belong to him. The High Court held that the notice issued under Section 153C is not valid.

The satisfaction recorded by the Assessing Officer shall not be in general nature. In **Commissioner of Income Tax V. Sinhgad Technical Education Society' – 2015 (4) TMI 190 – Bombay High Court** held that the reasons assigned by the Assessing Officer in the satisfaction note were silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the Revenue from the assessee. The general satisfaction as recorded in the note was not enough. There is no connection between the seized documents and third person. The High Court upheld the order of the Tribunal which held that assessment of third person is not valid.

Mere use or mention of the word 'satisfaction' or the words **'I am satisfied' in the order or the note would not meet the requirement of the concept of the 'satisfaction' under Section 153C. The satisfaction note that must display the reasons or basis for conclusions that** the Assessing Officer of the person in respect of whom the search is conducted is satisfied that the seized document belonged to another person. Ongoing through the contents of the satisfaction note, no 'satisfaction' of the kind required under Section 153C could be discerned. Thus the very first step prior to the issuance of a notice under Section 153C had not been fulfilled. Inasmuch as this condition precedent had not been met the notices under Section 153C were liable to be quashed.

Penalty not leviable without satisfaction recorded:

In **PCIT v Smt. Prabhjot Kaur Chhabra (2019) 419 ITR 94 (MP)** in principle it was held that return having been revised much prior to the date of issuance of the notice u/s 153C and the Assessing Officer having nowhere recorded his satisfaction that the assessee had concealed the particulars of income or furnished any inaccurate particulars of such income, there was no illegality on the order of the Tribunal to the effect that there was neither concealment of income nor furnishing of any inaccurate particulars thereof and no penalty u/s 271(1)(c) was leviable.

Incriminating materials must be found during a search:

In the case of **PCIT vs Ankush Saluja (2019) 419 ITR 431 (Delhi)** it was held that the assessment under the section must be based on any incriminating documents or materials found during the search period. In principle it was held that a search and seizure operation u/s 132 of the Income Tax Act 1961 was conducted in the group. Cash and jewellery which belonged to the assessee were found and seized from the residence of the assessee's father in whose name the search warrant of authorization was issued. The satisfaction note was recorded by the Assessing Officer in this regard and a notice u/s 153C r.w.s 153A was issued against the asseessee. In response thereto, the asseessee filed his return of income. The Assessing Officer after considering the explanation of the asseessee treated the unsecured loans as unexplained credit u/s 68 and made an addition to that effect. The assessment was completed u/s 153C r.w.153A. The CIT(A) held, interalia that the addition made by the Assessing Officer u/s 68 was not based on any incriminating document found or seized during the search and therefore, the addition could not be sustained. The Tribunal upheld the order of CIT (A).

In **CIT vs Promy Kuriakose-2016 (8) TMI 327-Kerala High Court** held that incriminating material must be found during search showing undisclosed income of third person. The Assessing Officer is to record his satisfaction for having jurisdiction over the third person in respect of search conducted that such money, asset or valuables belonged to third person. In the absence of incriminating search material the assessment of third person cannot be made.

In **PCIT v Nikki Durgs and Chemicals Private Limited 2015(12) TMI 304 – Delhi High Court** held that the assessee was assessed u/s 153C of the Act pursuant to a search conducted at SVP Group of Industries. The Assessing Officer passed assessment orders assessing the amounts credited in the books of assessee as income u/s 68 of the Act. CIT A held that the assessee was carrying on business only on paper and its sole purpose was to benefit others and hence the addition must be made in the hands of the beneficiaries and not in the hands of the assessee. The Tribunal held that the documents found during the search and seizure operation conducted with reference to the SVP Group did not belong to the assessee and therefore the assumption of jurisdiction u/s 153C of the Act was unsustainable.

The High Court held that it was necessary for the Assessing Officer of the person in respect of whom search was conducted **to record his satisfaction that the specified seized documents belonged to the assessee to initiate proceedings u/s 153C of the Act**. The Department failed to confirm whether such note was prepared before the initiation of the proceedings u/s 153C of the Act and also failed to controvert the contention of the assessee that such

note was not disclosed despite its request. Moreover, the documents seized could not be considered to be belonging to the assessee. The High Court held that the initiation of the proceedings u/s 153 is without jurisdiction.

Invalid proceeding:

In **Commissioner of Income Tax V. Refam Management Services Private Limited – 2015 (11) TMI 410** - the Delhi High Court held that the only document seized during the search was a cheque book pertaining the assessee which reflected the issue of cheques during the period from August 2008 to December 2008 relevant to the assessment year 2009 -10. Since there was no other evidence or undisclosed income, the proceedings under Section 153C were not valid.

Evidence

In **CIT V. DPA FINVEST Services Limited' – 2015 (7) TMI 918 – Delhi High Court** in the course of assessment proceedings M/s Friends Portfolio Private Limited (FPPL) it transpired that they were using the name and accounts of FPPL for the purposes of providing accommodation entries. One of such persons who benefited from such accommodation entry was found to be the assessee. It was shown to have received a sum of ₹ 61,993/- from FPPL on accommodation entry. On the basis of material a notice was issued to the assessee to explain each of credit entries in its bank account. The Assessing Officer concluded that entries in the accounting totalling ₹ 33.75 lakhs could not be explained by the assessee. They were treated as unexplained credit. Penalty proceedings were also initiated. The Commissioner (Appeals) held that the additions made were based on transactions which were not related to any evidence collected during the course of such proceedings in respect of the main person. The Tribunal dismissed the appeal of Revenue on the ground that addition could be made only for ₹ 61,993/-. The High Court dismissed the appeal filed by the Revenue by upholding the findings of Commissioner (Appeals) and confirmed by the Tribunal.

In **Assistant Commissioner of Income Tax V. Goodview Trading P. Limited' – 2016 (2) TMI 624 - ITAT DELHI** the assessee is engaged in the business of investments in capital market. A search was initiated on the Jackson group and its associates on 10.02.2010. Notice under Section 153C was issued on 02.06.2011, in response to which the assessee filed a return on 01.07.2011 declaring an income of ₹ 17,640/-. The Assessing Officer included an addition of ₹ 25 crores under Section 68 of the Act, vide order dated 29.12.2011. The Commissioner (Appeals) partly allowed the appeal and deleted the addition in dispute. The Commissioner (Appeals) held that the assessee had submitted necessary evidence to establish the bona fides of the transactions. Thereafter, the onus was shifted on the Revenue to prove that the claim of the assessee was factually incorrect. Though it was part of their duty to ensure that no tax which was legitimately due from the assessee remained unrecovered, at the same time they would not act in a manner as might indicate that scales were weighed against the assessee. On appeal the Tribunal upheld the order of CIT A.

Limitation:

The section also prescribes the notice if applies, the notice must be issued in accordance with section 153A as applicable to such cases. Time limit for completion of assessment u/s 153A is set down in section 153B.

It was held in the case of **Anilkumar Gopikishan Agrawal v ACIT (2019) 418 ITR 25 (Guj)** that section 153B provides for the limitation for completion of assessment and neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation of the satisfaction note u/s 153C oft eh Act and consequent issuance of notice to the other person. Admittedly, such satisfaction had not been reorded at the time of or along with the initiation of proceedings against the person in respect of whom the search was conducted u/s 153A of the Act.

CIT vs. Calcutta Knitwears (2014) 362 ITR 673 (SC) applied.

That the relevant date for computation of the six assessment years in respect of which notice was required to be issued was the immediately preceding assessment year relevant to the previous year in which such search was conducted or requisition was made. If notices u/s 153C of the Act had been issued for assessment years beyond these six assessment years they would be beyond jurisdiction.

In the case of **M/s. S.R. Batliboi & Co v. DIT(Investigation) W.P.(C)9479/2007 & CM 9520/2008 pronounced on 27th of May 2009** -

"The brief facts adumbrated before us are that while conducting an audit of EMAAR on 11.9.2007, the laptops of two employees of the Petitioner were seized by the Deputy Director, Income Tax (DDIT) in the course of conducting a Search and Seizure operation against EMAAR. Subsequently on 17.9.2007, the DDIT issued summons under Section 131 of the Income Tax Act, 1961 on 17.9.2007 to Ms. Sandhya

Sama and Shri Sanjay K. Jain, the employees of the Petitioner firm and their statements were recorded on 18.9.2007. It is further stated by the Petitioner that on the request of the DDIT these employees provided him with the electronic data relating to three companies of the EMAAR Group together with the print copies of the data. Nevertheless, the DDIT insisted on securing **total and unrestricted access to the laptops obviously in order** to gain information and data of all the other clients of the Petitioner. This request was refused by the employees. The seized laptops were sent by the Respondents to Central Forensic Science Laboratory (CFSL) who, however, could not ascertain the password and accordingly could not access the entire data on the laptops. The Petitioner was thereupon asked to disclose the password, which it again declined and thereafter the laptops were sealed in the presence of the said employees of the Petitioner.

The argument on behalf of the Petitioner is that the data relating to EMAAR Group of Companies has already been provided to the Respondents and the Petitioners are willing to cooperate with the Respondents in respect of every hue and aspect of the Search and to identify and provide any data stored in the laptops concerning EMAAR Group of Companies. The contention on behalf of the Petitioner is that granting absolute access to the IT Department of all the data even pertaining to the other clients of the Petitioners, having no dealings with the EMAAR Group, would tantamount to grave professional misconduct and would be contrary to the code of ethics applicable upon the Petitioner as well as the obligations contained in Chartered Accountants Act, 1949, which proscribes them from disclosing confidential information to third parties.

This argument was accepted by the Court.

The words "other person" employed in the Section must only be construed as referring to the other person having dealings or transactions with the party who is being searched or whose material is being seized.

Over two score years ago the Division Bench of this Court had opined in N.K. Textiles Mills –vs CIT, [1966] 61 ITR 58 propounded that it was "necessary and essential for these officers to take into custody only such books as were considered relevant to or useful for the proceedings in question. It was not open to them to indiscriminately, arbitrarily and without any regard for relevancy or usefulness, seize all the books and documents which were lying in the premises, and, if they did so, the seizure would be beyond the scope of the authorization"

Conclusion:

The assessment of any other person, other than the person searched should be based on satisfaction of the jurisdictional officer that there exists incriminating material against the third person. Any reference to the auditor concerned for collecting additional material should be restricted to the person concerned and the entire laptop including information of other clients cannot be seized. The identity of the other person must be clearly established.

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KSCAA WELCOMES NEW MEMBERS - JANUARY 2020

S.No.	Name	Place
1	**Jagadeesh Anant Hebbar**	Bangalore
2	**Nanjanagowda G**	Bellary
3	**Rakesh Kumar Singh**	Bangalore
4	**Dheeraj Madanlal Bafna**	Bangalore
5	**Shravana J.S.B.**	Shivamogga
6	**Deepak T.Jain**	Shivamogga

S.No.	Name	Place
7	**Deepika C.S.**	Bangalore
8	**Bhanu Prakash M**	Bangalore
9	**Somashekara R.**	Bangalore
10	**Prasad Adavayya Turamari**	Bangalore
11	**Madhu Kumar Hosakal**	Bellary
12	**Shivaraju P.**	Magadi

Challenges to GST

CA. Annapurna D Kabra

The Challenges in the Erstwhile Indirect Structure was multiple levies and compliances at the State and Centre levels, overlapping of tax on various transactions, complex laws on movement of goods like C Form/F form, Cascading of Taxes, Ineligibility of Input Tax Credit for Service Providers and CENVAT for Traders and disputes of classification, valuation and eligibility of credit. The GST law has changed the tax incidence, tax computation, tax structure, credit utilization, Input tax credit mechanism etc.

In the initial period of implementation of GST, the serious challenge faced by trade was shift from earlier tax regime to new tax regime. Many of the assessee were ignorant of carry forward of transitional credit through the transitional form and have just carried forward in monthly returns or missed it even to carry forward in transitional credit forms. There was short span of time of 180 days after the implementation of GST law to file the form for transitional credit. Therefore, many of the business entities have missed it to claim benefit of transitional credit or could not file the transitional credit form due to technical glitches. Many of the assessee have approached to the High court to extend the time limit for filing transitional credit or allow to file it manually. Though the High Court have agreed in many cases, but there is retrospective amendment in transitional provisions of GST law wherein the benefit is denied for filing transitional credit manually. Now based on Removal of difficulties order in suppression of order no 1/2019 -GST dated 31st January 2019, the CBIC extends the time limit for submitting the declaration in Form TRAN-01 under Rule 117(1A) of the CGST Act to March 31, 2020. It clarifies that relief is for taxpayers who could not submit declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the GST council.

The GSTN which is handled by government of India has its own piece of teething conflicts. The implementation of GST was not a smooth sailing and rather it was great challenge for the businesses all over the country because of technical glitches and frequent amendments in the GST law. In the initial months there was issue with filing of returns and blocking of working capital for the exporters who has claimed refund under the GST law. Now there is an amendment for filing the monthly returns in a staggered manner with different due dates for different states. Even filing of Annual return and Reconciliation statement (Form 9 and Form 9C) was challenge because of extension in due dates frequently and technical glitches at the time of filing. There was lot of amendments in the instructions and formats with different press releases for filings the Form 9 and 9C which created perplexities at different point of time. Now the implementation of New Returns format is also in transitional phase wherein the assessee got accustomed with the existing returns.

The business must keep a continuous track of amendments and rate changes if any and incorporate in their business structure as applicable. There is increase in registrations and accordingly there is increase in compliances cost for the businesses. Many a time, there was lot of frustration among the GSTN users due to error reports, rectification of complaints, no response from technical team, slow speed of server, non-compatibility, etc . Many a time there was glitches even due to difference in decimal points in figures as uploaded. Many of the business sectors was using the accounting software which were more user friendly for compliances under erstwhile indirect tax laws. The introduction of GST law has made trade to pay for the new GST compliant software/ transforming to digital record keeping which may not be completely compatible with the GST amendments and resulted in confusion and compliance issues.

The changes in the turnover limit and other amendments in composition scheme has created a confusion for its eligibility and applicability of the scheme. There is an increase in limit form 50 lakhs to 1.5 crore at different point of time. Registered persons opting to pay GST under composition scheme shall be liable to pay tax @ 1% and 5% respectively for traders/manufacturers and service providers notified under entry no.6(b) of II Schedule of

CGST/SGST Act. The traders have to pay tax on the taxable supplies and whereas the manufacturer has to pay the tax on the turnover in a state. The person who opt for this scheme can supply services other than food supply services of value not exceeding 10% turnover in a state in preceding financial year or five lakh whichever is higher. The decision to choose between the regular rate of taxes or composition scheme with no Input Tax Credit is difficult for many small entities.

The levy of IGST on ocean freight was challenged before Gujrat High Court on transportation of goods by vessel. The petitioner's submission was that Notification No. 8/2017-Integrated Tax (Rate) and Entry 10 of Notification No. 10/2017-Integrated Tax (rate) are *ultra vires* the IGST Act, 2017. The challenge was on following grounds as IGST has been paid on entire value of imports inclusive of ocean freight, it cannot be asked to pay tax on ocean freight all over again under a different notification and in case of CIF contracts, since both service providers and recipient are outside the Indian territory, no tax thereon can be collected even under reverse charge mechanism. There is chaos over applicability of IGST on ocean freight under reverse charge though many of the assessee are continuing to pay under reverse charge mechanism and claimed the input tax credit by setting off with other liabilities. Vide the case of *Mohit Minerals Private Limited Vs Union of India* 2020 VIL 36 Gujarat (HC) dated 23.1.2020 wherein it is held that the payment of IGST on ocean freight under reverse charge is held unconstitutional. Therefore, there are different views on payment of IGST on ocean freight as whether it will be challenged before Supreme Court or whether the assessee should stop paying IGST on ocean freight under reverse charge.

There is restriction imposed vide Rule 36(4) of the CGST Rules 2017. *The Rule state that Input tax credit to be availed by a registered person In respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent (10% w e f 1.1.20). of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37*. This Rule has been challenged in various courts. Rule 36(4) is challenged on the ground that it finds the reference in section 43A of CGST Act which is yet to be notified and override section 41, 42 and 43 of the CGST Act 2017. This Rule restricts the Input tax credit up to 20%/10 of value of Invoices in respect of Invoices/debit notes whose details have not been uploaded by the suppliers. Even the departmental Authority have initiated issuing advisory mails to the assessee for non-compliance of Rule 36(4) of CGST Rules 2017 whereas there is time limit to file GSTR-1 by vendors. In many instances the supplier files the GSTR-1 but there is possibility that such vendors would not have paid tax by filing Form GSTR 3B.

As per section 50(1) of CGST Act 2017, every person who is liable to pay tax in accordance with the provisions of the Act or the rules made thereunder but fails to pay tax or any part thereof to the Government within the prescribed period shall for the period for which the rate or any part thereof remains unpaid pay on his own interest at such rate not exceeding 18 % as may be notified by the Government on the recommendations of the council. The GST Council in its 31st Meeting held at New Delhi gave in principle approval to the following amendments in the GST Acts that amendment of Section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit. In simple terms interest would be leviable only on the amount payable through electronic cash ledger. The above recommendation will be made effective only after the necessary amendment in the GST Act are carried out. This amendment is eagerly awaited to see whether this amendment has retrospective effect as it can save some of the assessee who has already paid interest on net basis and not on gross basis accordingly.

The GST law is constantly evolving, and the Government authorities are quick to address the public concerns by issuing a series of Notifications, clarifications, press releases, FAQ, Twitter to resolve a wide range of issues. But simultaneously too many changes in in GST law and tax rates may not be compatible with the GST Network and it will be challenging to the assessee to comply both together. The way the challenges to GST are getting added, it is imperative to understand the implications of such challenges. Therefore It will be absolutely necessary to keep ourselves abreast of the GST law as GST is not just a tax reform but a business reform which is affecting almost every aspect of the operations in the business.

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Highlights of the Budget Proposals - GST & Customs

CA. Raghavendra C R & CA. Bhanu Murthy J S

I. Goods and Services Tax (GST)

A. Composition scheme [Section 10]- [Amendment vide clause 117]

Section 10 of CGST Act, 2017 provides for compositions scheme covering persons engaged in supply of goods, manufacturer or engaged in supply of food supply services. However, such persons, who opt for composition scheme, are allowed to supply services (other than food supply services) of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.

Presently, where a person undertakes supply of goods which are not leviable to tax or interstate supply of goods, or supply of goods through an E-commerce operator which attracts tax collection at source, are not eligible for opting for composition scheme. The aforesaid restrictions are proposed to be amended to cover not only supply of goods but also services, which were missing earlier.

The effect of this proposed amendment is that the eligibility to opt for the scheme is to restrict the same to such taxable persons who are engaged only in intra state supply of good or services (restricted to 10% of the turnover in the preceding financial year or Rs. 5 Lakhs) or who are not engaged in supply of non-taxable goods or services.

B. Input tax [Section 16]- [Amendment vide clause 118]

Presently, time limit for availing credit on the basis of debit note, is to be reckoned from the date of underlying invoice, to which the debit note relates. This amendment seeks to provide for computation of time limit from the date of debit note and not from the date of invoice.

C. Registration [Section 29&30]- [Amendment vide clause 119-120]

i. Clause 119: Cancellation of registration [Section 29]

Presently, a person who had registered voluntarily under GST, in terms of Section 25(3) is not allowed seek for cancellation of registration

The proposed amendment seeks to provide for cancellation of registration obtained voluntarily under sub-section (3) of section 25.

ii. Clause 120: Revocation of cancellation of registration [Section 30]

Presently any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order. Further, application for revocation of registration could not be rejected without proper hearing.

The proposed amendment seeks to provide that on sufficient cause being shown, and for reasons to be recorded in writing, the time limit, of 30days, may be extended by Additional Commissioner / Joint Commissioner (AC/JC) for a further period not exceeding 30 days. Further, the Commissioner may extend the time limit for additional 30 days over and above the extension granted by AC/JC.

D. Invoicing procedure [Section 31]- [Amendment vide clause 121]

Presently, section 31(2) provides that a registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice.

The clause seeks to amend section 31 so as to empower the Government to notify the categories of services or supplies in respect of which tax invoice shall be issued and to make rules regarding the time and manner of its issuance. The essence of the amendment is to provide more authority to rule making authority to prescribe where it would be mandatory to issue invoices as also the time and manner of issue of invoice.

E. Tax deduction at source-[Section 51]- [Amendment vide clause 122]

Presently, section 51(3) and 51(4) provide that the deductor shall issue certificate of deduction within

certain a prescribed time limit and in case of failure, late fee to be paid is provided.

The proposed amendment seeks to prescribe such time and manner of issue of deduction certificates through rules. Therefore, clause seeks to amend section 51 of the CGST Act so as to empower the Government to make rules to provide for the form and manner in which a certificate of tax deduction at source shall be issued.

F. Penalties and prosecution:

i. Penalties[section 122]- Clause 124:

New Provision (1A): The proposed amendments are to penalise persons who get benefited by (a) supply of goods / services without invoice;(b) issue of invoices without supply of goods or services;(c) taking input credit without actual receipt of goods or services ;(d) takes or distributes ITC in contravention with ISD provisions. In effect, amendment intends to penalize both supplier as well as recipient and also the persons on whose instance such transaction is conducted. Such persons would be liable to penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

ii. Prosecution provisions [Section 132]- Clause 125

Presently persons who commit certain offences are liable to prosecution. The amendment to sub-section (1) proposes to prosecute not only persons who commit the listed offences but also to prosecute the persons who causes to commit and retain the benefits arising out of such offences.

Further, in terms of the proposed amendment, the activity of fraudulently availing input tax credit, would be termed as cognizable and non bailable offence where the amount of ITC so availed exceeds Rs. 5 crores.

G. Transitional provisions-[Section 140]- [Amendment vide clause 126]-[Retrospective from 1.7.2017]

Section 140 provides for transition of credits and other benefits accrued under the erstwhile provisions of Central Excise, Service tax and VAT. Presently, the section does not provide any time limit within which such transitional credit could be availed. Based the said provisions, the High Court in the case of M/S. Siddharath Enterprises Vs The Nodal Officer 2019-TIOL-2068-HC-AHM-GST and the decision of the High Court of Punjab & Haryana in the case of Adlfert Technologies Pvt Ltd, the Courts held that no time limit could be prescribed under rules where such prescription was not provided under the statute and allowed filing of or correction of the transitional returns to avail the benefit. Further, other High Courts, including the High Court of Karnataka, have followed the above view.

The proposed amendment is to provide for time limit within which transitional credit can be claimed and consequently to overcome the decision of High Courts allowing filing or amendment of the Transitional returns. The said clause is given retrospective effect from 1.7.2017. This may not still come to the rescue of the government given that the credit is a vested right and the time limit itself may still be held procedural in nature.

H. Other amendments:

i. Amendments consequent to re-organisation of state of J&K:

Definition of Union Territory and provisions relating to Appellate Tribunal in a state, are suitably proposed to be amended to align with Jammu and Kashmir Re-organisation Act, 2019

ii. Power to issue instructions or directions [Section 168]

Presently the Commissioner specified inter alia in Section 66(5) and 143(1) shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

Bill seeks to amend section 168(2) of the CGST Act so as to make provisions for enabling the jurisdictional Commissioners to exercise powers under sub-section (*5*) of section 66 and also under second proviso to sub-section (*1*) of section 143. Section 66(5) refers to determination and payment of expenses of special audit and whereas Section 143(1) refers to approval for job work.

iii. Removal of difficulties [Section 172]

The proposed amendment seeks to increase the time limit to issue removal of difficulties order, from 3 years to 5 years from the date of commencement of GST. Similar amendments are also proposed in IGST Act, 2017, UTGST Act, 2017 and Goods and Services Tax (Compensation to States) Act, 2017.

iv. Amendment to Para 4 of Schedule II [with retrospective from 1.7.2017]: in para 4 of Schedule II, which classifies the transaction of disposal business

assets or use of business goods for personal or private use. The entries presently, read that the said clauses would be applicable whether or not consideration is involved in, such disposal / personal use.

Clause seeks to amend paragraph 4 of Schedule II to the Central Goods and Services Tax Act so as to omit the words "whether or not for consideration" retrospectively from 1.7.2017. The impact of the proposed amendment would be that these activities would be subjected to section 7(1), which means that there shall be existence of consideration to treat them as supplies. Even without this amendment, the said activities were subjected to section 7(1) in terms of the provisions contained in section 7(1A) of the CGST Act, 2017. However, the proposed amendment, makes it clearer.

I. Retrospective exemption:

a) Fish Meal: Complete exemption is granted from GST to Fish meal falling under heading 2301 for the period from 1.7.2017 till 30.09.2019.

b) Parts of agricultural machinery: Reduced rate of duty of 12% (6%+6%) for pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery (falling under headings 8432, 8433 and 8436), has been granted for the period from 1.7.2017 till 31.12.2018

Similar amendments were also proposed under IGST Act, 2017 & UTGST Act, 2017

J. Retrospective restriction to claim refund of compensation cess :

In Notification No. 3/2019-Compensation Cess (Rate), Dated 30-9-2019 no refund of unutilised input tax credit of compensation cess is allowed on tobacco and manufactured tobacco substitutes, where the credit has accumulated on account of rate of compensation cess on inputs being higher than the rate of compensation cess on the output supplies of such goods (i.e, inverted rate structure). This notification is deemed to be in force with effect from 01.07.2017. No refund is allowable.

II. CUSTOMS

A. Customs duty rate:

(i) First Schedule to Customs Tariff Act is proposed to be amended by Clause 115 of Finance Bill, 2020 so as to increase BCD tariff rate on certain goods.

(ii) Health Cess of 5% imposed on Medical Devices

(iii) Number of exemptions have been withdrawn and also proposed to be reviewed in September 2020.

B. Proposed changes in the Customs Act, 1962 (to be effective from enactment of the Finance Bill, 2020 except as indicated otherwise)

i) Power to prohibit importation or exportation of goods" [Section 11] - Clause 105:

The proposed amendment to enable the Central Government to prohibit either absolutely or conditionally the import or export of such goods to prevent injury to the economy on account of uncontrolled import or export of such goods.

ii) Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded[Section 28]- Clause 106:

Section 28 which provides for recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. Section 28(9) amended by insertion of proviso vide Finance Act, 2018 (effective from 28.03.2018) to provide that where the proper officer fails to determine within 6months/ 1 year or such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.

Based on this provisions, by giving retroactive effect to the said provisions, the Punjab and Haryana High Court in Harkaran Dass Vedpal vs UOI 2019 (368) ELT 546 (P&H) wherein it was held that adjudication proceedings would lapse if not done within reasonable period.

Vide clause 106, retrospective amendment is proposed to apply the amendment provisions only to the notices issued on after 28.03.2018 and not to the show cause notices issued earlier. This amendment seeks to overcome decision of the Punjab and Haryana High Court.

iii) Recovery of duties in certain cases [Section 28AAA] - **Clause 107**:

The clause seeks;

(a) to provide for recovery of duty from a person against utilisation of instruments issued under any other law, or under any scheme of the Central Government, for the time being in force, in addition to the Foreign Trade (Development and Regulation) Act, 1992.

(b) It also seeks to amend Explanation 1 to expand the scope of the term "instrument" to include duty credit issued under section 51B.

iv) Proposes to insert Chapter VAA of the Customs Act – Administration of Rules of Origin Under Trade Agreement: Clause 108:

Under this new Chapter VAA, a new section 28DA in the Customs Act is proposed so as to provide for administration of rules of origin under a trade agreement and to lay down procedure regarding claim of preferential rate of duty on goods imported under a trade agreement entered into between the Government of India and the Government of a foreign country or territory or economic union.

Newly proposed Section 28DA of the Customs Act provide for Procedure regarding claim of preferential rate of duty is summarized as under:

(a) Sub-section (1) provides that importer making claim for preferential rate of duty, in terms of any trade agreement, shall-

i. make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;

ii. possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;

iii. furnish such information in such manner as may be provided by rules;

iv. exercise reasonable care as to the accuracy and truthfulness of the information furnished.

(b) Sub-section (2) - The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(c) Sub-section (3) – Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(d) Sub-section (4) – Where importer fails to provide the requisite information for any reason, the proper officer may cause further verification consistent with agreement and pending verification may temporarily suspend the preferential tariff treatment.

(e) Sub-section (5) - Where the preferential rate of duty is suspended, the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed u/s 18 and the preferential duty claimed:

(f) Sub-section (6) - Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information to determine the origin of goods within such time and in such manner as may be provided by rules.

(g) Sub-section (7) – Where, subsequently, the Issuing Authority or exporter or producer, on the basis of specific information furnished, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(h) Sub-section (8) – Where the Issuing Authority or exporter or producer, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing.

(i) Sub-section (9) - Unless otherwise specified in the trade agreement, time limit for any request for verification is 'five years' from the date of claim of preferential rate of duty by an importer.

(j) Sub-section (10) – Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:––

(i) the tariff item is not eligible for preferential tariff treatment;

(ii) complete description of goods is not contained in the certificate of origin;

(iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority; the certificate of origin is produced after the period of its expiry.

In all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(k) Sub-section (11) – Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to

show that identical goods meet the country of origin criteria.

(l) Consequently, the provisions of section 111, which provides for confiscation of goods has been amended to allow confiscation of the goods which are imported by not following the above procedure. [Clause 111]

(m) Further, section 156, power to make rules, has been amended to empower the Central Government to make suitable rules for the purpose [Clause 112]

v) Electronic Credit Ledger: Amendment to chapter VIIA and insertion of section 51B to enable creation of electronic credit ledger in customs systems, so as to enable duty credit in lieu to the duty remission on exports etc., which could be utilised for payment of duty or to transfer. [clauses 109&110]

Further, section 157 has been proposed to be amended to provide for making regulations for the manner of maintaining electronic duty credit ledger, making payment from such ledger, transfer of duty credit from ledger of one person to the ledger of another and the conditions, restrictions and time limit relating. [clause157]

C. Proposed changes to Customs Tariff Act, 1975

i) Safeguard measures under section 8B of the Customs Tariff Act,1975 [Clause 114]:

a) When the measures could be invoked: In case where, the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantity and under such conditions, so as to cause or threaten to cause serious injury to domestic industry, it may by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.

The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such application:

If the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application:

Further, in no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.

b) **Nature of safeguards and measures**

(a) imposition of safeguard duty;

(b) application of tariff-rate quota or

(c) such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry:

Safe guard duty imposed shall be in addition to duties of customs levied.

c) Restrictions on imposing measures on imports from specified countries.

No such measure shall be applied on an article originating from a developing country so long as the share of imports of that article from that country does not exceed 3% three or where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than 3% import share taken together, does not exceed nine per cent. of the total imports of that article into India.

d) Exemption from the safeguard duty

The Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

e) Rate quota

Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.

f) Provisional levy of safeguard duty

The Central Government may, pending the determination under sub-section (1), apply provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

However, where on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the safeguard duty so collected:

Further any provisional safeguard measure shall not remain in force for more than two hundred days from the date on which it was applied.

g) Non applicability of safe guard measures

Safeguard measures shall not apply to articles imported by

a) 100% EOU

b) a unit in a special economic zone,

However, the above safe guards would be applicable to the above units, where:

i) it is specifically made applicable in such notification or to such undertaking or unit;

ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

h) Applicability of provisions of Customs Act, 1962 and rules and regulations made thereunder

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

i) Power to make rules:

The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing power, such rules may provide for––

(i) the manner in which articles liable for safeguard measures may be identified;

(ii) the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;

(iii) the manner of assessment and collection of safeguard duty;

(iv) the manner in which tariff-rate quota on identified article may be allocated among supplying countries;

(v) the manner of implementing tariff-rate quota as a safeguard measure;

(vi) any other safeguard measure and the manner of its application.

j) Definitions

(a) "developing country" means a country notified by the Central Government in the Official Gazette;

(b) "domestic industry" means the producers––

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury.

D. Clause 115: Amendments to Customs Tariff Act, 1975

First Schedule of the Customs Tariff Act is proposed to be amended as provided in second and third schedule to the Finance Bill 2020.

E. Health Cess- Clause 139::

Clause 139 proposes to impose 'Health Cess' on medical devices falling under heading 9018 to 9022 (as specified in Fourth Schedule to Finance Bill, 2020) at the rate of 5% ad valorem on import value of such goods as determined u/s 14 of Customs Act. Health Cess shall be levied as duty of customs.

Notification No. 8/2020-Cus dated 02.02.2020 grants exemption from Health Cess to the following:

(a) all goods falling under heading 9022 other than those for medical, surgical, dental or veterinary uses;

(b) All goods where exemption is claimed under Notifications issued under Preferential Trade Agreement with various countries;

(c) Specified goods exempt under Notification No. 50/2017-Cus.

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Decoding Union Budget - 2020 - KSCAA and FKCCI Joint programme - 5th Feb 2020




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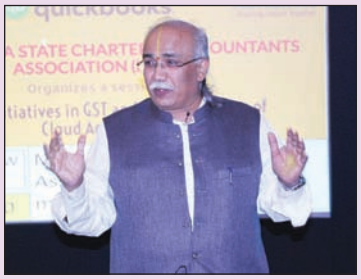
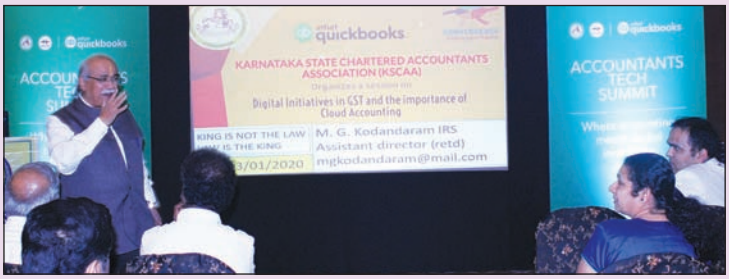

Post-Audit Scrutiny of Annual Returns, Suggested Approach & Statutory Remedies - 11th Feb 2020


Eloquent Professional Programme - 8th Feb 2020

Eloquent Professional Programme - 1st Feb 2020

Eloquent Professional Programme - 25th Jan 2020

32nd KSCAA 2020 Annual Conference

Friday, 6th March, 2020

08:30 AM	Registration
	INAUGURAL SESSION
09:30 AM	Inaugural Address by **Chief Guest**
	Release of Souvenir & Publications
10:45 AM	Inauguration of Exhibition & Tea Break
	FIRST TECHNICAL SESSION
11:15AM	**Panel Discussion - Opportunities to Small and Medium Practioners (SMP) including Outside India and Enabling Non-Traditional Areas of Practice**
	Moderator: **CA. Nityananda N**, Past Central Council Member, ICAI
	Panelists: **CA. Jay Chhaira**, Chairman - Professional Development Committee, ICAI
	CA. Babu Abraham Kallivayalil, Chairman - Committee for Export of CA Services and WTO, ICAI
	CA. Madhukar Hiregange, Past Central Council Member, ICAI
	CA. Chetan Venugopal, Founder, Pierian Services
12:25 PM	**CA Talk - Sharing an inward transformational experience**
	CA. Guru Prasad
12:45 PM	**SECOND TECHNICAL SESSION**
	Industries of the Future and Role of Chartered Accountants
	Speaker confirmation awaited
01:30 PM	Sponsor Program
01:45 PM	Lunch Break
	THIRD TECHNICAL SESSION
02:30 PM	**Demystifying Regulatory Rules of Business Valuation**
	CA. Chander Sawhney, New Delhi
03:40 PM	**CA Talk - Sharing an inward transformational experience**
	CA. Vivekananda Hallekere, CEO and Co-Founder, Bounce
03:55 PM	Tea Break
	FOURTH TECHNICAL SESSION
04:10 PM	**Auditors in a World of Advanced Analytics and Forensic Audit Scenarios**
	CA. Chetan Dalal, Mumbai
05:30 PM	**FIFTH TECHNICAL SESSION**
	VUCA - GST Panel Discussion
	Moderator: **CA. Sanjay Dhariwal**
	Panelists: **Shri. D.P. Nagendra Kumar**, IRS, Principal Chief Commissioner GST
	Shri. Srikar M. S., IAS, Commissioner of Commercial Taxes (GST)
	Adv. K. Vaitheeswaran, Chennai
	CA. Venkataramani S.

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Saturday, 7th March, 2020

08:30 AM	Breakfast
	SIXTH TECHNICAL SESSION
10:00 AM	**Panel Discussion on Compnaies Act Compliance - Regulatory vs Practioners Perspective** Moderator: **CA. K Gururaj Acharya** Panelists: **CS. Sajeevan** RoC Karnataka **CS. Sundaresan J**
11:00 AM	Tea Break
11:15 AM	SEVENTH TECHNICAL SESSION
	Direct Tax **CA. Dr. Girish Ahuja** New Delhi
12:30 PM	EIGHTH TECHNICAL SESSION
	Nuances of New Benami Law and its Interplay with Income Tax Law, Anti-Money Laundering Law (PMLA) and other Economic Laws and role of CAs in handling these laws before the ED, IO and other authorities **CA. Ashwani Taneja** Ex-ITAT Member, New Delhi
01:30 PM	Lunch Break
02:15 PM	SPECIAL SESSION
	Speaker confirmation awaited
03:15 PM	Tea Break
03:30 PM	**Cultural Program**
	CA Family - Cultural Program
05:00 PM	VALEDICTORY SESSION
	Chief Guest **Dr. Gururaj Karajagi**
06:30 PM	FAMILY ENTERTAINMENT PROGRAMME
08:30 PM	Family Theme Dinner

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- ✓ Highly useful & interactive technical sessions of current relevance & importance
- ✓ World class elite speakers
- ✓ Great networking opportunities
- ✓ Motivational sessions
- ✓ Product and services exhibition - featuring top-end consumer brands
- ✓ Publication of useful books of professional interest
- ✓ Professional Books at discounted price
- ✓ Souvenir
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- ✓ Entertainment Programmes
- ✓ Delicious food & family dinner

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CA. Vinayak Pai V

1. **CHANGES:** *Monthly Roundup*[1]

IND AS	• ICAI Exposure Draft o ***Conceptual Framework for Financial Reporting*** under Ind AS.
	• ICAI **Education Material** on **Ind AS 116**, *Leases*
IFRS	• IASBs **Request for Information** o Comprehensive Review of the ***IFRS for SMEs*** Standard ▪ Requesting views on different approaches to **updating the *IFRS for SMEs* standard** as well as views on how *IFRS for SMEs* could be **aligned with newer IFRS standards** (IFRS 9, IFRS 15 and IFRS 16)
	• Narrow scope **Amendments to IAS 1**, *Presentation of Financial Statements* o Clarification on how to **classify debt and other liabilities** as current or non-current.
Assurance	• **Digital Competency Maturity Model** for Professional Accounting Firms – Version 2.0 and **Implementation Guide** issued by ICAI.
	• IFAC - **ISA 315 (Revised 2019):** *Identifying and Assessing the Risks of Material Misstatement.*
Company Law/ SEBI	• SEBI's *Report of the Working Group on* ***Related Party Transactions***.
	• MCA General Circular No.1/2020 dated January 1, 2020 o Relaxation of additional fees and extension of last date of filing **Form No.BEN-2 and BEN-1** (Extended till March 31,2020)
	• MCA General Circular No. 02/2020 dated January 30, 2020 o Relaxation of additional fees and extension of last date of filing Form **AOC-4 NBFC (Ind AS)** and **AOC-4 CFS NBFC (Ind AS)** for FY 2018-19 (Extended till March 31,2020)
	• MCA Notification dated January 30, 2020 o **Companies (Accounts) Amendment Rules, 2020** o Relates to NBFC Ind AS filings.
RBI Notifications	• Financial Benchmark Administrators (Reserve Bank) Directions, 2019 – Notification of "**Significant Benchmarks**".
	• **Supervisory Action Framework** for Primary (Urban) Co-operative Banks.
	• Amendment to **Master Direction on KYC**.
	• Enhancing **Security of Card Transactions**.

US GAAP	• FASB Accounting Standards **Update (ASU) No. 2020-01** o **ASU clarifies interaction between Topic 321, 323 and 815** o Accounting for certain equity securities upon **application or discontinuation of the equity method** of accounting and **scope considerations** for forward contracts and purchased options on certain securities) o *Investments - Equity Securities* (Topic 321), *Investments – Equity Method and Joint Ventures* (Topic 323) and *Derivatives and Hedging* (Topic 815).

[1]*Updates for the period Jan 1 to Jan 31, 2020.*

2. **GETTING UP TO SPEED:** *Revised ISA 315* – **Identifying and Assessing the Risks of Material Misstatement**

The International Auditing and Assurance Standard Board (IAASB) has issued revised **International Standard on Auditing** ISA 315, *Identifying and Assessing the Risks of Material Misstatement*.

The salient aspects of the revisions made are summarized herein below:

- The revised ISA has **enhanced requirements** related to exercise of **professional scepticism**.
- Separate focus on **understanding** the **applicable financial reporting framework**.
- **Clarifications on which controls need to be identified** for the purposes of evaluating the design of a control, and determining whether the control has been implemented.
- **Considerations** for using **automated tools and techniques** incorporated within the application material of the standard.
- The revised ISA introduces new concepts and definitions:
  - "***Spectrum of inherent risk***" to assist the auditor in making a judgement, based on the likelihood and magnitude of a possible misstatement, on a range from higher to lower, when assessing risks of material misstatement.
  - "***Significant classes of transactions, account balances and disclosures***", "***relevant assertions***" and "***Inherent risk factors***".
- **Strengthened documentation** requirements relating to the **exercise of professional scepticism**.
- **Clarifies 'threshold'** for identifying 'possible' risks of material misstatement in ISA 200.

The ISA is effective for audits of financial statements for periods commencing on or after December 15, 2021.

3. **CASE STUDY:** *Reporting On A Key Audit Matter (KAM)* – **Deferred Tax Asset Recognition**

Background:

Company A has recognized significant deferred tax assets (DTAs) on the basis of future levels of profitability in the relevant tax jurisdictions. The magnitude of the assets recognized necessitates the need for significant judgements in assessing the levels of profitability over an extended period. A recent increase in the assets recognized and hence the forecasting period presents a heightened risk that DTAs are recognized inappropriately and there is an inherent increased level of uncertainty in the forecasting process over an extended period.

How the scope of the audit responded to the KAM:

- The auditor's **evaluated management's assessment** as to whether there will be sufficient taxable profits in future periods to support the recognition of DTAs by tax jurisdiction. The auditors **assessed the future cash flow forecasts and the assumptions** which underpinned them in light of the extended period.
- Where applicable, the auditors **reconciled the forecasts** used to justify the recognition of DTAs **to those used elsewhere in the business** including for long-term contract accounting and going concern statements.
- The **right of offset** of certain DTAs and DTLs **was also assessed** as also the **adequacy of disclosures in the notes** to the financial statements. Given the period for utilisation, the balance, in the opinion of the auditors,

requires constant re-assessment against the entity's future performance.

4. **FIN ST EXTRACTS:** *Revenue Recognition* – **Ind AS 115**

Extracts from published financial statements of a global listed company engaged in manufacture of aero engines and reciprocating engines (related to Revenue Recognition, Ind AS 115, *Revenue From Contracts with Customers*) is provided herein below.

- *Revenue recognized comprises sales to the Group's customers after* ***discounts and amounts payable to customers.***
- *The* ***transaction price*** *of a contract is typically clearly stated within the contract, although the absolute amount may be dependent on escalation indices and long-term contracts require significant estimations.*
- *Refund liabilities where* ***sales*** *are* ***made with a right of return*** *are not typical in the Group's contracts. Where they do exist, and consideration has been received, a portion, based on an assessment of the expected refund liability is recognized within other payables.*
- *Revenue excludes* ***value added taxes.***
- *The Group has elected to use the practical expedient not to adjust revenue for the* ***effect of financing components****, where the expectation is that the period between the transfer of goods and services to customers and the receipt of payment is less than a year.*
- *Sales of standard OE, spare parts and time and material overhaul services are generally* ***recognized on transfer of control to the customer****. This is generally on delivery to the customer, unless the specific contractual terms indicate a different point. Management considers whether there is a* ***need to constrain the amount of revenue to be recognized*** *on delivery based on the contractual position and any relevant facts.*
- *Sales of services and OE specifically* ***designed for the contract*** *are recognized by reference to the* ***progress towards completion of the performance obligation****, using the costs method, provided the outcome of the contracts can be assessed with reasonable certainty.*

5. **IFRS:** *Classification of Liabilities as Current or Non-current* – **Amendment to IAS 1**

The International Accounting Standards Board (IASB), on January 23, 2020 issued ***"Classification of Liabilities as Current or Non-current"*** making narrow scope amendments to IAS 1, *Presentation of Financial Statements.*

The amendment is effective to companies applying core IFRS (as issued by the IASB) from January 2022. Salient aspects of the amendments are highlighted herein below.

- The amendment clarifies how to **classify debt and other liabilities** as current or non-current.
- Facilitates companies in determining whether, in the IFRS balance sheet, debt and other **liabilities with an uncertain settlement date** should be classified as current (due or potentially due to be settled within one year) or non-current.
- The amendments include clarifications on classification requirements for debt a company might settle by converting it into equity.

6. **BACK TO BASICS:** *Finance Costs (Ind AS)*

The salient aspects of accounting for **Finance Costs** under Ind AS are discussed herein below.

- Finance costs comprise **interest expense** on borrowings, certain **foreign currency translation losses** related to financing, **unwinding of the discount** on provisions, **borrowing extinguishment costs**, **the interest element of lease payments** and **losses on derivative instruments** that are not designated as hedging instruments and are recognized in the Statement of Profit and Loss.
- Borrowing costs are recognized in the Statement of Profit and Loss using the **effective interest method.** Borrowing costs that are directly attributable to the acquisition or construction of a **qualifying asset** are capitalized as part of the cost of that asset. All other borrowing costs are recognized as expense.

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Diminishing Deemed Export Benefits

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Meaning of Deemed export

Exporters, importers, manufacturers and related industry entities are under the wrong impression that any import substitution of goods or services by the domestic industry, that result in savings of foreign exchange to the exchequer, are treated as Deemed Exports and all the benefits available to exports and exporters are awardable to such supplies. As per the earlier Foreign Trade Policies (FTP), [in chapter 8 of export import policy and now covered in chapter 7 of Foreign Trade Policy, 2015-20], the above concept was, to some extent, true. But the subsequent changes brought about in Indirect tax laws and procedures, have constrained the meaning of Deemed Exports as well as tapered down the benefits available to Deemed Exports. Now in the Goods and Services tax [GST] regime, the FTP 2015-20 has been aligned with Section 147 of CGST act 2017, which has further narrowed down the benefits extended to such supplies. At present, the Deemed Export benefits are limited to certain specified activities, and refunds are granted for one person in the supply chain. These are not treated as 'zero rated' under Section 16 of Integrated GST Act 2017[IGST Act], and therefore benefits extended to 'exports out of India' and to 'supplies to SEZ' are not open to these transactions / Supplies. An attempt is made, here to familiarise all concerned, about the law and procedure to be followed in respect of Deemed Exports under the new GST regime.

Deemed Exports under FTP

Foreign Trade Policy (earlier known as Exim Policy) is a set of legally enforceable stipulations, guidelines and instructions notified by the Director General of Foreign Trade [DGFT] of Ministry of Commerce of the Central Government, as empowered under Section 5 of the Foreign Trade Development and Regulation Act, 1992[FTDR Act], in respect of matters relating to the imports and exports of goods and services into and out of India. The DGFT is the main governing body in matters related to Indian trade Policy in the international businesses and commerce. Mandates so made, in respect of import and export of goods, are implemented by the Customs department [Ministry of Finance] at the borders. In the era of GST, the said activities have been aligned and integrated with GST laws, procedures and administrations. Now the Foreign trade policies are to be understood and implemented by all such agencies involved in GST law compliances.

As per the FTP 2015- 20, [chapter 7, with effect from 5.12.2017 and as updated on 30.6.2019] the objective for providing Deemed Exports measures are stated to be, *"to provide a level-playing field to domestic manufacturers in certain specified cases, as may be decided by the Government from time to time."* The "Deemed Exports" for the purpose of this FTP refer to those transactions in which goods supplied do not leave the country, and payments for such supplies are received either in Indian rupees or in free foreign exchange. The Supply of goods as specified in Paragraph 7.02 shall be regarded as "Deemed Exports" *provided goods are manufactured in India.* It further emphatically states that, *"Deemed Exports, for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST Council"*. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification issued by respective State Governments and Central Government. The Categories of Supply included in the present FT policy are*: (a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement /DFIA; (b) Supply of goods to EOU / STP / EHTP /BTP; (c) Supply of capital goods against EPCG Authorisation;* . The benefits for Deemed Exports listed are:*(a) Advance Authorisation / Advance Authorisation for annual requirement /DFIA; (b) Deemed Export Drawback for BCD; (c) Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act 1944 provided the supply is eligible under that category of Deemed Exports and there is no exemption.*

The said FTP defines the term 'manufacture' and *"Manufacturer Exporter"* as follows:

"Para 9.31 "Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, re-packing, polishing, labeling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering. Manufacture, for the purpose of FTP, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining." And

"Para *9.32 "Manufacturer Exporter" means a person who exports goods manufactured by him or intends to export such goods."*

Deemed Exports under GST law

In Section 2(39) of CGST Act, 2017, the Deemed Exports are defined as: *"Deemed Exports" means such supplies of goods as may be notified under section 147."* The Section 147 of the CGST Act 2017 stipulates the following as amounting to 'Deemed Exports': **"***The Government may, on the recommendations of the Council, notify certain supplies of goods as Deemed Exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India."* The term manufacture has also been defined in the CGST Act as follows: *Section 2(72) of CGST Act "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;"*

In line with the above empowerments, three notifications have been issued by the Central Government specifying supplies, benefits and procedures available to Deemed Exports. By issue of Notification No. 47/2017-Central Tax dated 18.10. 2017, the CGST Rule 89 (1) has been expanded by adding a third proviso as under: *" 2. In the CGST Rules, 2017, – (i) in rule 89, in sub-rule (1), for third proviso, the following proviso shall be substituted, namely:-"Provided also that in respect of supplies regarded as Deemed Exports, the application may be filed by,- (a) the recipient of Deemed Export supplies; or (b) the supplier of Deemed Export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund";*

Earlier to this notification, in respect of supplies regarded as Deemed Exports, the application for refund shall be filed by the recipient of Deemed Export supplies only. But it has been liberalised so that either the Supplier or the Recipient can file application for refund. Supplier can claim for refund only in case where the Recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

The second Notification bearing No. 48/2017 – Central Tax dated 18.10. 2017 has been issued notifying the following supply of goods as Deemed Exports:

"1. Supply of goods by a registered person against Advance Authorisation;

2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation;

3. Supply of goods by a registered person to Export Oriented Unit;

4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation."

Further the "Export Oriented Unit" has been defined in the notification to include, *" Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20".*

The third Notification issued is No. 49/2017-Central Tax dated 18.10. 2017 which notifies the following, as evidences required to be produced by the supplier of Deemed Export supplies for claiming refund:

"1. Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said Deemed Export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said Deemed Export supplies have been received by it;

2. *An undertaking by the recipient of Deemed Export supplies that no input tax credit on such supplies has been availed of by him;*
3. *An undertaking by the recipient of Deemed Export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.*"

Conditions to be satisfied for Deemed Exports

On analysis of the law and procedures as set out in GST statutes, we can treat a commercial transaction as 'Deemed Exports', if and only if the following conditions are satisfied.

1. The Deemed Export provisions are applicable only for supply of goods specified GST registered persons / recipients only, and not for any supply of Services or Job-works or other exempted supplies.
2. Such goods are not required to be taken outside India, by the supplier.
3. Such supply of goods must be notified by the Central Government as Deemed Exports under Section 147 of the CGST, 2017. The same has been notified by issue of Notification No. 48/2017 – Central Tax dated 18.10. 2017.
4. The said Goods or products must have been *manufactured in In*dia. Therefore the imported goods that do not undergo any further manufacture are not eligible for the said benefit.
5. Payment can be received either in Indian Rupees or in convertible foreign exchange.
6. Such supplies cannot be made under Bond / LUT as they are not Zero rated supplies. The procedures under Rule 96 or Rule 96A of CGST rules 2017 are not available to such supplies.
7. All supplies notified as supply for Deemed Export will be subject to levy of taxes at applicable rates.
8. The tax must be paid at the time of supply, by observing the norms applicable to all domestic industrial suppliers.
9. Refund of tax paid on such supplies can be claimed, either by the supplier or recipient. Appropriate Taxes should be paid on such supply by the supplier and then be claimed as refund.
10. As per the third proviso to Rule 89(1) of CGST Rules, 2017, application for refund in case of Deemed Exports can be filed by the recipient of Deemed Export supplies. However the recipient should not have availed Input tax credit (ITC) on such deemed supplies. It may be noted that rule 89(4A) of the CGST Rules, 2017 as amended vide Notification no. 75/2017-Central Tax dated 29.12.2017 (w.e.f 23.10.2017), the recipient of Deemed Export supplies can claim refund of input tax credit availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both. Further Rule 96(9) of the CGST Rules, 2017 as amended vide Notification no. 75/2017-Central Tax dated 29.12.2017 (w.e.f 23.10.2017) also provides that the recipient of Deemed Export supplies on which the supplier has availed the benefit of notification No. 48/2017-Central Tax dated 18.10.2017 cannot export on payment of integrated tax.
11. The recipient is not eligible to claim the ITC in case refund of tax paid is being claimed by the supplier.
12. For claiming refund benefits online, the refund procedure as prescribed in section 54 of CGST Act read with Circular no. 14/14/2017-GST dated 06.11.2017 and Circular No. 125/44/2019 – GST dated 18.11.2019 shall be followed.

Fully electronic refund process for Deemed Exports

Recently for claiming refunds under section 54 of CGST Act on Deemed Exports, in the place of manual filing, the fully electronic refund process has been started. The Circular No. 125/44/2019 – GST dated 18.11.2019 has been issued detailing the electronic refund process for filing of FORM GST RFD-01 and for disbursal of refund by single authority/ agency. With effect from 26.09.2019, the applications for the following types of refunds shall be filed in FORM GST RFD 01 on the common portal and the same shall be processed electronically. The instances listed contain: "f. *Refund to supplier of tax paid on Deemed Export supplies; g. Refund to recipient of tax paid on Deemed Export supplies.*"

The guidelines to be followed for claim of refund of tax paid on Deemed Exports has been prescribed in Para 41 of the said circular. Documents prescribed in this circular read with procedures in Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017 for claiming refund by the supplier, of tax paid on Deemed Exports are :

(1) Statement 5(B) under rule 89(2)(g);

(2) *Declaration under rule 89(2)(g);*

(3) *Undertaking in relation to sections 16(2)(c) and section 42(2);*

(4) *Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.*

Similarly for claim of refund by the recipient, the documents prescribed are:

(1) *Statement 5(B) under rule 89(2)(g);*

(2) *Declaration under rule 89(2)(g);*

(3) *Undertaking in relation to sections 16(2)(c) and section 42(2);*

(4) *Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.*

For obtaining refund the recipient or supplier of Deemed Exports have to file the electronic application through the Common Portal, either directly or through a facilitation centre notified by the Commissioner. The time limit prescribed for making such claim is before the expiry of two years from the date on which the return relating to such Deemed Export supplies. The application has to be accompanied by a statement containing the number and date of invoices along with such other evidences as may be notified. It is important to note that Interest at the rate of 6% as prescribed under Rule 94 of CGST Act is payable if the full refund is not granted within 60 days of filing the application.

Crucial factors in Deemed Exports

As elucidated, the earlier perceptions with regard to Deemed Exports are no more applicable in the GST era, as only limited benefits are ushered in the present system. The definitions mandated are narrower than the earlier stipulations. Such supplies are not to be treated on par with exports out of India or supply to SEZ area and SEZ units. The benefits extended to regular exports are not available to these transactions. Even to obtain refund by either the supplier or the recipient, prescribed claim under section 54 has to be preferred within a period of 2 years from relevant date. The author feels that the refund in respect of Deemed Exports is virtually not a measured benefit. Normally the recipient of Deemed Export supply prefer to claim Input Tax credit and utilises the same towards tax liability of outward domestic supplies and normally not interested to claim refund which takes much longer time. Only in such cases where the recipient has predominantly more exports than domestic sales, then in such a situation he may prefer the refund route.

Further the definition of 'manufacture' in the FTP covers broader range of products and processes than the one prescribed in CGST Act. As stated above, in FTP, *"Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, re-packing, polishing, labeling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering. Manufacture, for the purpose of FTP, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.* The same has been narrowed down in CGST act to mean, *"means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly."* Whether the processes such as refrigeration, re-packing, polishing, labeling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering could amount to manufacture under CGST Act is the issue that appears to be litigation prone. If such processes are done on goods belonging to recipient, under GST Laws, it amounts to supply of services, which are kept out of the stated 'Deemed Export' provisions. Also products and processes relating to '*agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining*' amounts to Deemed Export is also contentious matter in view of the narrower definition in the CGST Act. Therefore there is immediate need to harmonise the provisions of FTP with the GST Laws.

Conclusions

In view of the changed legal position, the beneficiaries are expected to exercise utmost care before drawing benefits relating to Deemed Exports. The author feels that the Government should broaden the scope of deemed exports so that it will encourage the domestic industry as well as results in saving of valuable foreign exchange to the country.

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Direct Tax – Vivad se Vishwas Scheme An Overview

CA. Sachin Deshpande

Background

The Finance Minister has introduced the 'Direct Tax Vivad se Vishwas Bill, 2020' in the Lok Sabha on February 05, 2020 for resolution of long-standing direct tax disputes between the Government and the taxpayers. After considering the success of The 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019', introduced in 2019 to settle disputes under indirect taxes, The Indian Finance Minister announced introduction of the Direct Tax Vivad se Vishwas Bill, 2020 (‹the Scheme›) during budget speech.

Currently there are 4.83 lakh direct tax cases pending at various appellate forums. Further, as on November 30, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. For the financial year 2018-19 actual direct tax collected by the Government was Rs.11.37 lakh crores. Whereas, the disputed tax arrears constitute nearly one year of direct tax collection. Hence, the introduction of the Scheme to settle the long pending litigation is a welcome move.

Persons eligible to apply under the Scheme

The Taxpayer (declarant) whose appeal is pending as on January 31, 2020 before the Supreme Court or the High Courts or the Income-tax Appellate Tribunals (ITAT) or the Commissioner – Appeals (CIT-A) are eligible to apply under this scheme. These appeals could be filed either by the taxpayer or by the Income-tax authority. However, it does not include litigations pending before Dispute Resolution Panel (DRP) and Settlement Commission.

Tax payable under the Scheme

Sl.No.	Nature of tax arrear	Amount payable under this Scheme on or before the 31st day of March, 2020	Amount payable under this Scheme on or after the 1st day of April, 2020 but on or before the last date.
A	Aggregate of disputed tax and interest and penalty on disputed tax	Amount of disputed tax	Amount of disputed tax + 10% of disputed tax (restricted to interest and penalty charged on the disputed tax)
B	Disputed interest, penalty or fees	25% of disputed interest, penalty or fees	30% of disputed interest, penalty or fees

Definition of Disputed Tax or Interest or Penalty

a. The term disputed tax has been defined under section 2(1) (f) of the proposed Scheme by way of a formula.

- *"Disputed tax", in relation to an assessment year, means—*

  Tax determined under the Income-tax Act, 1961 in accordance with the following formula—

  (A - B) + (C - D)

  Where,

  A = an amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961other than the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961(herein after called general provisions);

  B = an amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which appeal has been filed by the appellant;

C = an amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961;

D = an amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income in respect of which appeal has been filed by the appellant:

If the 'amount of income' in respect of which appeal has been filed is considered both under the provisions contained in section 115JB/115JC and under general provisions, then such amount shall not be reduced from total income assessed while determining the amount under item D. Further, if the provision of section 115JB or 115JC are not applicable, Step C and D shall not be applicable.

Furthermore, if 'amount of income', in respect of which appeal has been filed, has effect of reducing loss declared in return or converting that loss into income then, "(A-B)" part of the formula shall be replaced with the 'amount of tax' that would have been chargeable on 'income' in respect of which appeal has been filed.

- Tax determined to be payable by the assessee in respect of TDS and TCS and appeal has been filed against such order.

b) 'Disputed interest' means any interest determined under the provisions of the Scheme (not being an interest charged or chargeable on disputed tax) against which appeal has been filed and pending before the appellate forum.

c) 'Disputed penalty' means any penalty determined under the provisions of the Scheme (not being a penalty levied or leviable on disputed income or disputed tax) against which appeal has been filed and pending before the appellate forum.

d) 'Disputed fee' any fee which is determined as per the provisions of the Scheme against which appeal has been filed and pending before the appellate forum.

Illustration on computation of disputed tax or penalty under the scheme

Particulars	Scenario 1 (Addition is challenged)	Scenario 2 (Penalty is challenged)
Disputed tax	200	-
Interest charged and penalty levied on disputed tax	100	-
Disputed Penalty	-	40
Amount payable (if payment is made on or before 31 March 2020)	200 (i.e., 100% of disputed tax)	10 (i.e., 25% of disputed penalty)
Amount payable (if payment is made after 31 March 2020 but before the closure of the Scheme)	220 (i.e., 110% of disputed tax)	12 (i.e., 30% of disputed penalty)

Procedure

The declarant (Taxpayer/Revenue) shall be required to withdraw the appeal from the appellate forums and is required to file proof of such withdrawal along with the declaration.

Once the declaration is filed as per Section 3 of the Scheme by a declarant, the designated authority is required to issue a certificate determining the amount payable by the taxpayer within a period of 15 days. The taxpayer is required to pay the amount specified within 15 days from the date of receipt of the certificate and also required to intimate the same to the designated authority in the prescribed form. Thereafter, designated authority shall pass an appropriate order.

Impact of the scheme on pending appeals

Once taxpayer files declaration under the scheme, any appeal pending before the Supreme Court or the High Court, ITAT

or CIT(A), in respect of the disputed income/disputed interest/disputed penalty/disputed fee, shall be withdrawn from the date on which certificate is issued by the designated authority.

Further, tax payer shall also withdraw any claim under any proceeding initiated for arbitration/conciliation or mediation under any agreement entered by India with any country outside India including Investment Protection Agreement.

Non Applicability of the Scheme

The Scheme shall not be applicable in the following cases:

- Tax Arrear in respect of assessments made under section 153A or section 153C which relates to assessment in case of search or seizure;
- Tax Arrear in respect of assessment year for which prosecution has been instituted on or before the date of filing of the declaration;
- Tax Arrear in respect of undisclosed income from a source outside India or an undisclosed asset located outside India;
- Tax Arrear in respect of assessment or reassessment made on the basis of agreement referred to u/s 90 or 90A of the Income Tax Act, 1961;
- Tax Arrear in respect of appeal before the CIT(A) in respect of which notice of enhancement u/s 251 has been issued of the Income Tax Act, 1961 on or before the date of filing of the declaration;
- And to certain categories of persons who are under detention order, prosecution order etc under various different acts.

Issues in the Scheme

- It is not clear from the Scheme whether the declarant is eligible to get the refund of tax or interest already paid.
- The scheme does not clarify that declarant can file declaration for the full disputed tax or partial disputed tax.
- The provision of section 3 of the Scheme reads that the amount payable by declarant under the Scheme is dependent on date of filing of declaration. However, as per schedule given below section 3 of the Scheme, provides that amount payable by declarant under the Scheme is dependent on date of payment. Hence, the clarity is required in those cases where the designated authority determined the amount payable by the taxpayer within March 31st. However, payment has been made after March 31st.
- The scheme does not include any provisions in relation to MAT credit.

Conclusion

This Scheme is introduced with an intention to reduce the ongoing tax litigations. Hence, the initiative of the Government needs an appreciation. However, time limit prescribed for availing the benefits under Scheme is very short and this may have a potential impact on the number of taxpayers who choose to opt under the Scheme. Further, Government has to extend the existing time limit to enable more taxpayers to avail the benefit of the Scheme.

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Budget 2020: Build for the Future

CA. Sandeep Jhunjhunwala & Mr. Tilak Ramesh Agarwal

The first budget of the new decade is here. Budget for the fiscal 2020-21 woven around 3 prominent themes: Aspirational India, Economic Development and Caring Society was tabled by the Finance Minister, being her first full time budget presentation in the Parliament. Two cross-cutting developments ie proliferation of technologies and favourable demographics of working population were in the backdrop.

Personal Taxation

Following the suit of corporate taxation rejig, the Budget has proposed to provide an option to individuals and HUFs by inserting a new Section 115BAC and relax the complications of various exemptions and deductions available. Keeping the tax relief on income below INR 5 lakhs intact (relief through Section 87A), this section states that individuals and HUFs can opt to pay tax as per new slab rates which would benefit the taxpayers by a nominal tax amount of INR 37,500 for income below INR 10 lakhs and further by INR 37,500 for total income below INR 15 lakhs. Nevertheless, the taxpayer would have to forgo various benefits of exemptions and deductions (including Sections to 80C to 80U other than Sections 80CCD (2) and 80JJAA). This would require an in-depth analysis before opting to the new personal taxation rejig by a resident. However, this rejig could potentially benefit non-resident individuals like expatriates working in India as they mostly claim deduction under Section 80C towards PF contribution and / or education fees of their children.

The taxation of perquisites of the employees of eligible start-ups (as per Section 80-IAC of the Act) exercising ESOPs has been deferred and this would definitely assist in unlocking the cash flows for such employees. Alternatively, this would also reduce the TDS compliance burden of such eligible startups.

It is also proposed to provide an upper limit of INR 7,50,000 in respect of employer's contribution in a year to NPS, superannuation fund and recognized PF of the employee. Any amount in excess of this limit would be taxable as perquisite. Consequently, any annual accretion by way of interest, dividend, etc on such excess contribution would also be taxable as perquisite. This amendment is proposed on account of undue advantage to employees earning high salary income. This may impose a high burden on Indian corporates hiring the highly paid expatriates (other than seconded employees) who are required to comply with PF regulations in India.

Provisions related to Tax collection at source at the rate of 5 percent has been proposed on overseas remittance under Liberalised Remittance Scheme and on sale of overseas tour program package. A higher tax of 10 percent would be collected in non-PAN / Aadhar cases. This proposed amendment in Section 206C is a new tax on the payer and not the recipient. The payer would get TCS certificate from the Bank and will be able to claim credit of the same against the tax payable for the year. TCS mechanism will aid the Revenue Authorities in detecting cases where taxable income trends of the remitter as per the return of income does not match with expenditure/ remittance patterns.

Taking note of the fact that many Indian citizens and PIOs have taken advantage of the extension of time to carry on substantial economic activities in India without qualifying as residents, the fiscal budget proposed to reduce the threshold from 182 days to 120 days. In other words, pursuant to physical presence Test No 2 [Section 6(1)(c)], an Indian citizen or PIO will qualify as a tax resident of India if he is in India during that fiscal year for 120 days or more and has been in India for a total of 365 days over the course of the 4 year period preceding that fiscal year. Also, the conditions for Not Ordinarily Resident ("NOR") has been relaxed and now a taxpayer would be considered as NOR in India if he / she has been a non-resident in India in 7 out of 10 fiscal years preceding that fiscal year. Non-residents who have extensive business or family ties in India and who typically plan longer visits to India need to watch out this amendment.

In addition to the above, residency provisions for the purpose of taxation has been tightened, specifically for stateless persons, who are not liable to tax in any country or jurisdiction. This anti-abuse provision has been introduced as it was noticed that some Indian citizens shift their stay in low or no tax jurisdiction to avoid payment of taxes in India. This amendment would imply that global income of an Indian citizen residing in countries such as UAE, Oman, Kuwait, Cayman Islands etc could have been taxable in India. The interpretational issues in the proposed provisions could have led to mischief as taxpayers who have moved abroad for employment or other bonafide purposes could have been subjected to tax scrutiny and potential notices from the Indian Revenue Authorities. However, the Government of India, on the following day of the budget announcement, clarified that such Indian Citizen shall be deemed as RNOR instead of ROR in India. Consequently, income accrued or derived in India and income from business / profession in India only are proposed to be taxed in India

Corporate Taxation

The sound of Christmas bells could be heard in February by the corporates when the Finance Minister, in her budget speech, proposed to eliminate the Dividend Distribution Tax and moving to the classical system of taxing dividend in the hands of shareholders. This proposed abolishment would certainly benefit the non-resident investors as now they would be eligible for lower tax on such dividend (~5 to 15 percent) depending on tax residency along with claiming of credit for tax paid in India on such dividends. For the residents, this would help to avoid the litigation under Section 14A of the Act. However, highincome earners would suffer higher taxes on account of this transition.

The threshold limit for tax audit, ie turnover of INR 1 Crore in case of person carrying on business is proposed to be increased to INR 5 Crores. This is particularly aimed to reduce the compliance burden on MSMEs. However, the cash transactions should not exceed 5 percent of the aggregate receipts or payments respectively.

Aiming to provide incentive to Start-ups in India, fiscal budget also proposes to rationalize the taxation on the profits of eligible start-up companies in India with effect from April 1, 2020 by extending the 100 percent tax holiday benefit for 3 consecutive years out of 10 years from the date of Incorporation. Further, keeping in line with the Department for Promotion of Industry and Internal Trade ("DPIIT") Notification of 2019, the definition of eligible start-ups is proposed to be amended and increase the turnover limit up to INR 100 Crores in the financial year for which tax holiday is to be claimed. Nevertheless, it is pertinent to note that such benefit is extended only to 260 eligible start-ups approved by Inter-Ministerial Board (as per Section 80IAC) till date, which is approximately just 1 percent of total start-ups recognized by the DPIIT.

Furthermore, as an extension of the new tax rejig introduced in September 2019, the domestic companies opting for such lower rates of tax can now claim deduction under 80JJA or 80M as proposed in the budget. Further, new rate of taxation at 15 percent has been extended to companies engaged in generation in electricity.

Withholding tax

The budget has proposed to reduce the rate for TDS under Section 194J in the case of technical services to 2 percent from the existing 10 percent rate to keep in line with Section 194C and reduce the area of ambiguities between these two sections. It also proposed to extend the period of concessional rate of withholding tax under Sections 194LC and 194LD till July 1, 2023. Also, the insertion of new Sections 194K and 194-O is proposed thereby, widening the base of TDS provisions. Section 194K provides for TDS deduction on purchase of units of mutual funds or of specified companies from a resident, in excess of INR 5,000 at the rate of 10 percent, increasing compliance burden on the transactions and Section 194-O provides for TDS at the rate of 1 percent by the e-commerce operator on gross sums exceeding INR 5 lakhs, paid to the e-commerce participant, thereby taxing the income element of the seller / service provider at source.

On the face of the proposed Finance Bill, the Finance Minister surely seemed to making progressive changes favourable to all. Hopefully, Budget will prepare India to become a $5 trillion economy.

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- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
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- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

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MOTTO: KNOWLEDGE IS STRENGTH

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