



KSCAA[®]

Karnataka State Chartered Accountants Association (R)

NEWS BULLETIN

April 2023 | Vol. 10, Issue 08 | ₹ 25/-
English Monthly - for Private Circulation only







-  Karnataka State Chartered Accountants Association
-  @karnatakacaassociation
-  @kscaa_ca
-  kscaa.com

Photo Captured by : CA. Chidananda Urs

From the President

Dear Readers,



TAs we embark on a new financial year, I would like to extend my heartfelt greetings to each and every one of you. The past year has been a challenging one, and we have all had to adapt to a rapidly changing landscape in our profession. However, I am confident that with the resilience and determination we have shown, we will continue to excel in the coming year. The advancements in technology have brought significant disruptions to our profession, and we must remain vigilant and stay abreast of the latest developments to remain relevant. With Artificial intelligence, Machine Learning are at our doorstep, we are witnessing an unprecedented era of transformation that requires us to adapt to the new realities of our profession. As members of the accounting industry, we have a responsibility to keep ourselves informed about the latest advancements and to equip ourselves to embrace them.

While the thought of technological disruption may be daunting, it also presents opportunities for growth and innovation. By integrating new technologies into our operations, we can increase efficiency, improve accuracy and provide more value to our clients. As an association, we are committed to helping our members stay abreast of these changes and incorporate them into their daily operations. We will continue to provide opportunities for training and professional development, so that we can embrace these new technologies with confidence and expertise.

RBI has kept the interest rates unchanged until the end of fiscal year and after frequent hikes in interest rate, this is in the background of inflation hovering higher than normal.

I must thank all the members who came to the 35th KSCAA Annual Conference held at White Petals, Palace Grounds. I am delighted that Annual Conference was a resounding success. The conference was held under the theme of "order and Chaos" with over 1,000 attendees and a diverse range of speakers. The insightful speeches covered areas and interest on traditional topics like taxation and on contemporary topics like Business Frauds, moulded in multiple panel discussion to bring varied perspective on the subjects. The networking opportunities provided our members with a platform to exchange ideas and experiences. We also had an Experience Centre in the venue to showcase the talents of our members who have exceedingly done well outside profession and those who have succeeded in profession in spite of their physical and mental limitations.

The SVB disaster showed the vulnerability of big and renowned financial institution which can succumb and create economic pressures to all its dependants. The Indian context of the same is equally scary to imagine, especially to small deposit holders and it can be counterproductive in creating the eco system of reliability on financial institutions. The greatest lesson is that of insurance on small deposit holder, the DICGC insures all bank deposits up to a maximum amount of Rs 5 lakh. This implies that you will have access to deposits up to Rs 5 lakh if your bank fails. Any amount above it will be lost.

As Chartered Accountants, we are entrusted with a great responsibility to provide accurate and reliable financial information to our clients. We must ensure that the information we provide is transparent and trustworthy. As members of this association, we have the opportunity to lead by example and set the standard for ethical behaviour in our industry. Beyond technological advancements and ethical practices, we have a collective responsibility to participate in the democratic process. The upcoming state election in Karnataka is a vital opportunity for us to exercise our right to vote and shape the future of our state.

In conclusion, I would like to reiterate my best wishes to all our members for the coming year. As an association, we are committed to providing you with opportunities for professional development and growth, so that we can stay ahead of the curve in this rapidly evolving industry. Let us work together to uphold the highest ethical standards, embrace technological innovation, and promote the welfare of our community.

As we move forward, it is essential to remember that our focus as an association extends beyond technological innovation. We have a duty to uphold the highest ethical standards in our profession. As Confucius once said, "The will to win, the desire to succeed, the urge to reach your full potential... these are the keys that will unlock the door to personal excellence." We must strive for excellence in our work, including maintaining our commitment to ethics and integrity.

Happy Reading!

Yours' faithfully,

CA. Pramod Srihari
President



KSCAA[®]

NEWS BULLETIN

April 2023
Vol. 10 Issue 08
No. of Pages : 40

CONTENTS

DIRECT TAX

INCOME TAX UPDATES 4

INDIRECT TAX

INDIRECT TAX UPDATES (PART - I) 5
CA. RAGHAVENDRA C R
CA. Bhanu Murthy J S

INDIRECT TAX UPDATES (PART - II) 7
CA. SRIKANTH ACHARYA G B
CA. VASANTH KUMAR J

INDIRECT TAX UPDATES (PART - III) 10
CA. Sowmya C.A.

CORPORATE LAW

CONSULTATION PAPER ON ESG DISCLOSURES,
RATINGS AND INVESTING 12
CA. Aditya Kumar S

FINANCIAL REPORTING

FINANCIAL REPORTING AND
ASSURANCE 25
CA. Vinayak Pai V

RERA

RERA - YEAR END COMPLIANCES 30
CA. Vinay Thyagaraj

IPR

INTELLECTUAL PROPERTY RIGHTS AND
PROTECTION IN INDIA INTERNATIONAL
ISSUES RELATING TO PATENTS 33
Adv. M. G. Kodandaram

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

VISION

- 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;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- 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.

MISSION

- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

MOTTO: KNOWLEDGE IS STRENGTH

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

E-mail: journal@kscaa.com | Website: www.kscaa.com

Disclaimer

The Karnataka State Chartered Accountants Association does not accept any responsibility for the opinions, views, statements, results published in this News Bulletin. The opinions, views, statements, results are those of the authors/contributors and do not necessarily reflect the views of the Association.

INCOME TAX UPDATES

DIRECT TAX NEWS ROUND UP JUDICIAL UPDATES

ITAT

1. Assessee-partnership firm filed revised return and claimed deduction under section 10AA, since there was no specific provision under section 10AA to file return of income within provisions of section 139(1), assessee couldnot be deprived of claim on grounds that claim was not filed under original return within specified time limit as per section 139(1). ([2023] 149 taxmann.com 65 (Ahmedabad - ITAT)).
2. Where once business of assessee as per its books was proved fictitious and bogus, action of Assessing Officer in rejecting books of account was justified. (194 ITD 92 (Surat-Trib.)).
3. Where assessee made payment to a non-resident for purchase of software and capitalized same, no disallowance of depreciation on said capitalized amount could be made by invoking section 40(a)(i) even though assessee did not deduct TDS on such payment. ([2022] 141 taxmann.com 195 (Bangalore - Trib.))
4. Interest paid by Indian Branch of assessee-Japanese bank to its overseas head office was not chargeable to tax in India. (ITA No. 2867 to 2872 (Mum) of 2022)
5. Interest under sections 234A and 234B, being compensatory in nature, can only be levied up to such date of self-assessment and not beyond that period or till date of completion of assessment. (ITA. 181 (RJT) OF 2022).

High Court

1. Section 50C would not be made applicable to determine capital gains on compulsory acquisition of land by National Highways Authority of India (NHAI) as question of payment of stamp duty for effecting such transfer would not arise. ([2023] 148 taxmann.com 50 (Calcutta)).
2. Reassessment notice issued between 1-4-2021 & 30-6-2021 will be deemed to be notice issued u/s 148A & will not be saved from time-barring by TOLA. ([2023] 147 taxmann.com 549 (Allahabad)).
3. CSR expenses of a PSU is a deductible as business expenditure u/s 37 of the Act. (450 ITR 184)(cal)

4. AO should verify the information collected from other sources such as Central Information Branch and Annual information Return. Where information is not verified the order u/s 148A is not valid. (450 ITR 344 (AP))

Supreme Court

1. No deduction is admissible u/s 80-IB on the profit earned from DEPB/Duty Drawback Schemes. ([2023] 149 taxmann.com 145 (SC))
2. Where assessee-company, engaged in software development, had remitted tax deducted at source in respect of salaries, contract payments etc. belatedly, it was not a case of non-deduction of TDS at all and thus assessee was not liable to pay penalty under section 271C. ([2023] 149 taxmann.com 144(SC))
3. SC sets aside order of denial of registration to trust u/s 80G by invoking sec 80G(5B) without bringing facts on record; Matter remanded to CIT for fresh decision. (SLP no.31404 of 2018)
4. SLP dismissed against order of High Court that where there was no genuine hardship or reasonable cause for late filing of returns, application for condonation of delay in filing return was rightly rejected. ([2023] 148 taxmann.com 363 (SC))

From CBDT

1. CBDT specifies 01.07.2023 as the date for enabling the rule 114AAA(4) of the Income Tax Rules, 1962. (Order F.No. 370142/14/2022-tpl, dated 1-4-2023)
2. Exemption of Income of Specified Person from An Investment Made In India - Specified Pension Fund. (Notification No. S.O. 6103(E) [NO. 128/2022]).
3. CBDT signs 95 advance pricing agreements in FY 2022-23. (press release, dated 31-3-2023)
4. Partial relaxation with respect to electronic submission of form 10F by select category of taxpayers in accordance with DGIT (systems) notification no. 3 of 2022. (Circular f. no. DGIT(S)-ADG(S)-3/e-filing notification/forms/2023/13420, dated 28-3-2023).
5. The department has released a mobile app called "AIS for Taxpayer" to facilitate the taxpayers to ensure the availability of AIS / TIS. (Press Release, Dated 22-3-2023)

INDIRECT TAX UPDATES

(PART - I)

IMPORTANT JUDICIAL PRONOUNCEMENTS



CA. Raghavendra C R

CA. Bhanu Murthy J S

1. CCGST & CE Vs Edelweiss Financial Services Ltd., 2023-TIOL-26-SC-ST

Background: Show cause notice was issued proposing to demand service tax on the corporate guarantee provided by the company. The adjudicating authority, taking note of the fact that no consideration was charged for providing such guarantee by the company, dropped the demands. This was upheld by the Tribunal which observed that any activity to be considered as taxable service must have a service provider and recipient and there shall also be flow of 'consideration' for rendering of the service. In the absence of any of these two elements, taxability under section 66B of Finance Act, 1994 will not arise. Against the said decision of the Tribunal, the Revenue preferred an appeal before the Hon'ble Supreme Court.

Held: In the Civil Appeal, Hon'ble Supreme Court, taking note of the facts, observed that in the present case assessee had not received any consideration while providing corporate guarantee to its group companies. Further, as no effort was made on behalf of Revenue to assail the above finding or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service, the Civil Appeal was dismissed.

2. Tonbo Imaging India (P.) Ltd. Vs. Union of India, [2023] 148 taxmann.com 487 (Karnataka):

Background: Assessee is engaged in designing and manufacture of various types of advanced imaging and sensor systems. These goods are exported by the assessee and consequently claimed the refund of accumulated credit on account of zero rated supplies under Rule 89 of CGST Rules, 2017.

Rule 89(4)(C) of CGST Rules, 2017 which defines the term 'Turnover of zero-rated supply of goods' was amended by Notification No. 16/2020-CT dated 23.03.2020, to restrict the value of goods exported to 1.5 times the value of like goods domestically supplied, for the purpose of computing the refunds. As petitioner did not have local supplies of like goods (products

being customized and specialized ones), the refund was rejected.

In this background, the petitioner challenged the validity of the said amendment to Rule 89(4)(c) and also the order rejecting the refund in terms of the said provision.

The High Court held that the amendment to Rule 89(4)(C) of CGST Rules, 2017 is ultra vires and the said amendment was struck down based on the following observations:

- a) The said amendment is ultra vires the provisions of section 16. The said section provides for zero rating of exports (making exports taxfree). However, the rule whittles down the refund by placing restrictions, which goes against objective of the zero rating and therefore the amendment is arbitrary and unreasonable.
- b) The said amendment suffers from vice of vagueness as the phrases 'like goods' and 'similarly placed supplier' have not been defined. Further, in case of unique and customized products, there cannot be availability of like goods.
- c) The said amendment also lacks clarity as the said rule does not provide for consequence where there are no local supplies of like goods.
- d) The object of zero rating would be lost where the exports are made to suffer GST.

3. Patanjali Foods Ltd. Vs Union of India, 2023) 4 Centax 268 (Kar.)

Background: The Petitioner imported Crude Sunflower Seed Oil of Edible Grade in Bulk and bill of entry for warehousing was filed on 27.06.2022. The said goods were freely importable under the provisions of Foreign Trade Policy. However, vide public notices dated 24.05.2022 and 14.06.2022, issued by the DGFT, certain conditions were imposed for the purpose of import of the said goods. Consequently, the importer has to clear the goods on payment of higher amount of duty. In this background, the validity of said conditions imposed through the public notices were challenged.

Held: As per Section 3(2) of FTDR Act, only the Central Government can make provision for prohibiting, restricting or otherwise regulating the import or export of goods or services or technology. Further, relying on the decision of the Hon'ble Supreme Court in the case of Kanak Exports, the Court held that the imposition of conditions through public notice is not in accordance with the law and hence quashed.

4. Ernst And Young Ltd. vs Additional Commissioner, CGST Appeal-II

Background: Petitioner, is an Indian Branch of i.e., Ernst & Young Ltd (UK) and it entered into service agreements for providing professional consultancy service to various entities outside India. The petitioner applied refund of ITC accumulated towards export of services i.e., (Professional Services) for the period from December 2017 to March 2020., the refunds came to be rejected on the basis that the said activity is in the nature of intermediary services.

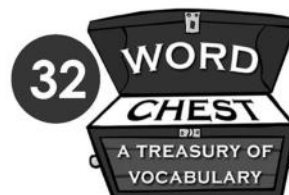
Issue: Whether services rendered by the petitioner to EY entities in terms of the service agreement constitute services as an 'intermediary'?

Held: The Hon'ble High Court while holding that the said services cannot be termed as intermediary services, observed as follows:

1. The expression of Intermediary u/s 2 (13) of the IGST Act, envisages that a person who arranges or facilitates the supply of goods or service between two persons or more persons. Thus, the person who supplies goods or services is not an intermediary. In the instant case, the petitioner does not arrange or facilitate service, but they themselves are providing services to their customers/ clients.
2. The adjudicating authority has interpreted the last limb i.e., "but does not include a person who supplies such goods or services or both or securities on his own account" of Section 2(13) of the IGST Act, 2017 as controlling the definition of 'intermediary'. The said interpretation is flawed in as much as the last limb of merely restricts the main definition. The last line of the definition clarifies that the definition is not to be read in expansive manner.
3. There is broadly no change in the scope pf intermediary services in the GST regime vis a vis the service tax regime. The department has accepted that the service rendered by petitioner prior to GST regime was 'export of service'. The ITC for the period after March 2020 was allowed.

4. As the services provided by the Petitioner does not fall under the definition of 'intermediary', provisions of Section 13 (8) (b) of IGST Act, 2017, as regard place of supply does not apply.

Authors can be reached at :
raghavendra@vraghuraman.in;
bhanu@vraghuraman.in



Fintech word

Security token

Similar to traditional securities, security tokens are financial instruments that represent ownership interest in an asset- only they've been created digitally (tokenized) to unlock the power of the blockchain.

With tokenization, many of the traditionally laborious and manual processes involved in bringing securities to public and private markets may be transferred to the blockchain and automated. This benefits issuers and investors in a wide variety of ways.

SUDOKU-32

	9	4		5	7			
2							3	
		7			2			
	6		8	2	3	5	7	1
	7	3	5	9	1	2		6
	2	5	4			3		9
9		1		3		4	6	7
	4	2			5		1	
3	8	6						

INDIRECT TAX UPDATES

(PART - II)

ANALYSIS OF RECENT LANDMARK JUDGEMENTS



CA. Srikanth Acharya G B



CA. Vasanth Kumar J

The Goods and Service Tax (GST) being introduced as the biggest tax reform with a tagline 'One Nation One Tax' on 01st July, 2017. The government is trying to smoothen the road to GST by issuing various notifications, circulars, amendments and advance ruling to make GST a good and simple tax.

Supreme Court and High Courts have been pronouncing judgements on various petitions, appeals under Goods and Service Tax (GST). Obviously, these judgements are important in deciding the issues or settling the relief in larger public interest. These pronouncements have far reaching impact and bearing on GST administration and powers of field formation, besides directly impacting the taxpayer. Certain Judgements issued by the courts are in the favour of taxpayers while the handful of ones has been issued in favour of the GST departments also and these judgements are issued in jurisdiction of law.

Further, the Advance rulings also provide certainty for tax liability in advance in relation to a future activity to be undertaken by the applicant and it reduces the litigation and costly legal disputes. An advance ruling also guides the taxpayers when he is confused and uncertain about certain provisions.

Some of the recent court judgements are covered in this article for wider reach to the professionals, the brief of the same is covered under this article:

1. **Delhi HC:** In the case of Kishore Kumar Arora Vs Union of India & ANR, the Hon'ble High Court of Delhi, held that- proper officer has no jurisdiction to issue SCN on a person whose taxable turnover is less than threshold limit.

Facts:

- The petitioner (Kishore Kumar Arora) is engaged in the business of tobacco products. In this case, the Proper Officer has issued a Show Cause Notice against the petitioner.
- The narrow issue which arises for consideration in this matter is, whether the respondent had the jurisdiction to issue the impugned show cause notice.

- Also the respondent, without jurisdiction and / or authority of law, not only confiscated the subject goods i.e., tobacco products, but also imposed penalty amounting to Rs.18,69,307/- (rounded off to Rs.18,69,400/-).
- Mr J.K. Mittal, learned counsel, who appears on behalf of the petitioner, contends that the petitioner's taxable turnover was amounted to Rs.15,28,468/-, but based on the incorrect advice given by petitioner's CA, he had deposited a sum of money determined in the notice amounting to Rs.18,69,400/-.

Submission:

- Mr. Mittal submits that since the taxable turnover of the petitioner was below the threshold limit prescribed qua tobacco products [for being registered under GST regime **during said period**] i.e., Rs.20,00,000/-, the respondent had no authority and/or jurisdiction to issue the impugned show cause notice and pass the aforementioned orders.
- Further, Mr Mittal submits that the petitioner was, therefore, not required to register himself as per Section 22(1) of the Central Goods and Services Act, 2017 [in short "CGST Act"]. In support of this plea, Mr Mittal has drawn the attention to Section 2(6) of the CGST Act and the impugned show cause notice dated 21.02.2020. Mr Mittal seeks to establish that, even according to the respondents, the taxable turnover of the petitioner was Rs.15,28,468/- in the relevant period. In this case, the taxable turnover of the petitioner is less than the threshold limit. To support this, the petitioner has submitted sufficient evidence to prove that his turnover was less than the threshold limit.

Judgment:

Based on the material placed on record, the Hon'ble high court concluded that the taxable turnover of the petitioner was Rs.15,28,468/-, which, as noticed above, is below the threshold limit of Rs.20,00,000/- fixed for tobacco products.

Consequently, the impugned show cause notice dated 21.02.2020, Order-in-Original dated 16.10.2020 and the Order-in-Appeal dated 03.08.2021 were set aside. Accordingly, the respondents are directed to refund Rs.18,69,400/- deposited by the petitioner, along with interest @6% (simple) per annum.

Author Comments: The said 20 lakh turnover is for the said specified period of issue. Now the said turnover for GST registration is Rs. 40 lakh for supplier of goods.

2. **Oasis Reality Roma Builders Pvt. Ltd. Vs. Union of India & Others**, the Hon'ble Bombay High Court held that, the pre-deposit of 10% of disputed tax can be paid from credit available in Electronic Credit Ledger.

Pre-deposit provisions and sections under GST Law:

The concept of pre-deposit is introduced under GST with a basic purpose of stoppage of unnecessary adjudication which is generally preferred by the appellant only to delay the demand. Due to the pre-deposit provision, there are major chances that only genuine appeal will be filed.

a. Pre-deposit provisions under GST law:

Provisions of section 107(6) of the Central Goods and Services Tax Act, 2017 (CGST Act) prescribes the mandatory pre-deposit condition to be satisfied by the appellant before filing an appeal before the First Appellate Authority (FAA). Accordingly, the appellant is required to make payment of the following pre-deposit payments arising out of the impugned order-

- (i) 100% of the tax, interest, fine, fee and penalty admitted by the appellant; and
- (ii) 10% of the remaining amount of disputed tax, subject to a maximum of INR 25 Crores. [20% of the remaining amount of disputed tax, subject to a maximum of INR 50 Crores in case of appeal to Tribunal Sec. 112(8)]

b. Mode of payment of pre-deposit:

There are two modes of payments available under GST i.e., 'Electronic Cash Ledger' and 'Electronic Credit Ledger'. However, there is a lot of confusion with regard to the mode of payment of pre-deposit.

Discussion about case law

Issue involved in this case:

- Whether the petitioner is required to comply with the requirements of Sub-section 6 of Section 107 of the Maharashtra Goods and Services Tax Act, 2017 ('MGST Act') of paying a sum equal to 10% of the amount of Tax in dispute arising out of the impugned order by paying the amount utilising the credit available in the Electronic Credit Ledger?

Contention by the Petitioner and department:

- Petitioner contends that 10% of the amount of tax in dispute i.e. pre-deposit can be paid by utilizing the credit available in the Electronic Credit Ledger.
- Whereas, Department contends that Sub-section (4) of Section 49 restricts the usage of the amount available in the Electronic Credit Ledger only for payment of output tax or under MGST or under IGST and the amount available cannot be utilized for payment of tax under clause (b) of Sub-section (6) of Section 107.

Observations made by High court:

- Clauses (a) and (b) of Sub-Section (6) of Section 107 states that where there is an admission of part of the order and the admission is in relation to tax, interest, fine, fee and penalty, all those amounts will have to be deposited first and, to the part which is not admitted only 10% of the tax in dispute has to be deposited.
- We must also note that the expression used in Sub-section (6) of Section 107 is, "No appeal shall be filed under sub-section (1), unless the appellant has paid". It is a precondition to filing an Appeal. The expression used is "paid" and not "deposited".
- Sub-section (1) of Section 49 provides for a party to deposit its tax, interest, penalty, fee or any other amount and how such deposit has to be made and such a deposit is made it shall be credited to the Electronic Cash Ledger.
- Sub-section (2) of Section 49 provides that the input tax credit (ITC) as self-assessed in the return of a registered person shall be credited to his Electronic Credit Ledger.
- Sub-section (3) of Section 49 provides that the amount available in the Electronic Cash Ledger may be used for making any payment towards tax, interest, penalty, fee or any other amount payable under the provisions of this Act or rules made thereunder.
- Sub-section (4) of Section 49 provides that the amount available in the Electronic Credit Ledger may be used for making any payment towards output tax under MGST Act or under IGST Act
- Sub-section (5) of Section 49 provides for, how the amount of ITC available in the Electronic Credit Ledger shall be utilised.
- Sub-rule (2) of Rule 86 of MGST Rules provides for debiting of the Electronic Credit Ledger to the extent of discharge of any liability in accordance with the provisions of Section 49 of the MGST Act.

- Output tax in relation to a taxable person is defined in Clause (82) of Section 2 of MGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.
- This High Court has disregarded the ruling given by the Orissa High Court in the case of *M/s Jyoti Construction Vs. Deputy Commissioner of CT & GST [2021 (10) TMI 524]* due to clarification issued by *CBIC vide Circular No. 172/04/2022-GST dated 6th July 2022*
- CBIC has itself clarified that any amount towards output tax payable, as a consequence of any proceeding instituted under the provisions of GST Laws, can be paid by utilization of the amount available in the Electronic Credit Ledger of a registered person.

Pronouncement:

Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the MGST Act can be made by utilization of the amount available in the Electronic Credit Ledger.

Hence, a party can pay 10% of the disputed Tax either using the amount available in the Electronic Cash Ledger or the amount available in the Electronic Credit Ledger.

Therefore, the High Court has held that Petitioners may utilise the amount available in the Electronic Credit Ledger to pay the 10% of Tax in dispute as prescribed under Sub-section (6) of Section 107 of MGST Act since amounts payable are towards output tax. Thus, the impugned order and APL-02 issued by the Respondent is quashed and set aside.

Author Comments:

Now by this judgment, industries covered inverted duty sales, Exporters under LUT are able to file Appeal without effecting their working capital. This encourages business man to better ease of doing business and understand the law.

3. **Gujarat HC:** *Shree Govind Alloys Pvt Ltd., Intention to Evade GST cannot be Assumed Merely on Ground of Expiry of E-Way Bill.*

Facts:

- The truck carrying its goods was an inoperable condition. The goods were to be delivered by 17th October 2022 but could not be delivered in time. During an inspection on October 19, the officer found that the e-way bill had expired. The goods and truck were seized by GST officials and on 22nd November 2022, a demand notice for Rs 7.53 lakh was issued to the company.

Decision:

- After hearing the case, the bench of Justice Sonia Gokani and Justice Mauna Bhatt said that the release of goods of conveyance and transit through the GST authority concerned was 41 hours after the expiry of e-way bill, but there was no fraudulent intention behind this and this was not a case of attempted tax evasion. The bench ordered the officials to release the truck and quashed the demand notice as well.

Author Comments:

Provision of section 129 is silent on the aspect of intention to evade tax while levying penalty. However courts have consistently held that penalty is not leviable if intention to evade tax is absent or not coupled with violation of procedures in regard to movement of goods. Dealers can take the benefits of these decisions when penalty proceedings are initiated under section 129 of the Act.

*Authors can be reached at :
srikanth@dnsconsulting.net*

INDIRECT TAX UPDATES

(PART - III)

IMPORTANT JUDICIAL PRONOUNCEMENTS



CA. Sowmya C.A.

In this issue, we bring to you, some interesting case laws and important judgements published during the recent times.

1. Whether GST Registration can be cancelled consequent to penal proceedings being initiated against the taxpayer upon investigation?

Inspection proceedings were initiated by the GST Authorities and some documents such as invoices were seized under a mahazar from the office of the Registered Person. Following this, summons were issued and the Registered Person was arrested and taken into custody. The petitioner was in judicial custody from 16 Nov 2022 to 8 Dec 2022 on which day he was admitted to bail and released. In the meanwhile, show cause notice for cancellation of registration was issued on 17 Nov 2022 and registration cancelled on 30 Nov 2022. Aggrieved by the said cancellation, writ for revocation of cancellation was filed on the grounds that the petitioner could not have been served with Show Cause Notice dated 17 Nov 2022 and he could not have issued any response when he was in judicial custody. The cancellation of registration is arbitrary on the ground that no opportunity of being heard was provided.

The court considering the facts of the case held that order of cancellation to be set aside for arbitrariness in proceedings and permitted to pass suitable orders for revocation of the cancellation of the registration if the petitioner files the pending Returns for the relevant period.

(M/s. S.P. Metals Versus Assistant Commissioner Of Commercial Taxes Bengaluru, Superintendent Of Central Tax Bangalore - 2023 (4) TMI 304 Karnataka High Court)

2. Whether objection against levy of penalty for movement with expired e-way bill will sustain in writ, when penalty is paid without any objections being raised both during adjudication and appeal ?

The E-way bill of the goods of the petitioner had expired due to break-down of the vehicle midway and goods were intercepted. A show cause notice was issued and opportunity of hearing was given to the petitioner. The proposed penalty was accepted and paid without raising any objection. The adjudicating authority, in the absence of any

objection, confirmed the penalty. Appeal was filed against the order, however was a formal one without any supporting documents and hence proceedings were rejected in appeal also. Post this, writ was filed before the Calcutta high court, on whether levy of penalty in the instant case was contrary to law.

The court observed that the company has not provided any document to support circumstances leading to contravention and has meekly paid penalty. No documents substantiating movement was submitted at adjudication or appeal stage. Further, the High Court observed that the petitioner cannot be permitted to raise the objection for the first time, more so, after everything is over.

It also reiterated the verdict of Supreme Court repeated on several occasions that a statutory authority does not have any power to do anything unless such powers are specifically enumerated in the Statute which creates it. The authority merely performs the statutory obligation.

Here, it does not appear that the authority acted in any manner contrary to law. Travelling without a proper e-way bill attracts penalty. The authority assessed the penalty amount and the petitioner deposited the same without any objection and there is hardly any reason to interfere in the instant proceeding. The writ petition fails and is hereby dismissed.

(Pushpa Devi Jain Versus Assistant Commissioner Of Revenue 2023 (3) TMI 528 - Calcutta High Court)

3. Whether section 130 can be invoked for confiscation and levy of penalty for excess stock of goods found in the business premises and whether service of Notice to the Accountant of the firm is a valid notice?

The Deputy Commissioner, (SIB), Commercial Tax, Mirzapur Division conducted inspection of the premises and issued a seizure memo though purchases were against invoices and duly reflected in GSTR2B/GSTR3B and the petitioner was compelled to deposit an amount of Rs. 52,20,000/- for getting the goods released. Further summons were issued which were duly attended and submitted. Subsequently, order was passed. An appeal was preferred against the said order, wherein in terms of the appellate order, where the amount was reassessed and the petitioner

was required to pay a total amount of Rs.15,84,810/-. Aggrieved by the said Impugned Order and the appellate order, it was challenged before the high court for reasons as below:

- (I). Whether tax can be assessed/ determined in exercise of powers under Section 130 of the GST Act?
- (II). Whether penalty can be levied only on the allegations that at the time of verification, the goods were found in excess at the premises?
- (III). Whether the service of notice as claimed by the respondent satisfies the requirement contemplated under Section 169 of the GST Act?
- (IV). Whether the valuation of goods can be done on the basis of eye estimation alone and on the basis of production capacity and/ or the consumption of electricity etc?

The issue raised in the present writ petition is decided in view of the fact that the appellate tribunal contemplated under the Act has not yet been constituted.

- It was held that Penalty and fine under section 130 can be levied only when it shown to attract one of the five conditions enlisted therein and not otherwise;
- Further, section 130 applies only when liability to pay tax arises, and not at any point earlier or it is established an ingredient the intent to evade payment of tax ;
- In terms of Clause (a) of Section 169(1), a service would be completed only when it is tendered to the taxable person or on his manager or authorized representative.
- Serving on the Accountant of the firm is neither contemplated nor provided for under Section 169(1)(a) and thus the service as claimed by the Counsel cannot be held to be a valid service. Thus, the entire proceedings are liable to be quashed.
- The valuation of the goods is required to be done in terms of Section 15. In the said Section 15 or the Rules framed thereunder, there is no prescriptions for valuation of the goods on the basis of eye estimation as has been done by the department. Further, no basis has been provided for the valuation done by the appellate authority.

Therefore, the entire proceedings are set aside and petition allowed.

(M/s. Maa Mahamaya Alloys Pvt. Ltd. Versus State Of U.P. & 3 Others- 2023 (3) TMI 1358)

4. Whether Service Received by a registered person

by way of renting of residential premises used as guest house of the registered person is subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM)?

The applicant a registered person under GST had taken 2 residential houses for use as guest house in Delhi. One from a registered person and another from an unregistered person. The guest houses were used to provide food and accommodation services to employees on their visit to Delhi for official purposes. The term residential dwelling is not defined anywhere in the GST Act and as per normal trade parlance means as any residential accommodation, but does not include hotel, motel, inn, guest house, camp - site, lodge, houseboat, or like places meant for temporary stay. Since guest house is not covered under residential dwelling, the transaction is chargeable under forward charge by the service provider being the owner of the apartment.

As per amendment vide Notfn No. 5/2022 dated 13 Jul 2022, residential dwelling received by a registered person is liable to GST under RCM. The authority for advance ruling held that it may be noted that type or nature/purpose of use of residential dwelling i.e. for residence or otherwise by the recipient, has not been a condition in the said RCM notification.

Hence it was held that if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM as per Notification No. 05/2022 Central Tax (Rate) dated 13th July 2022.

(Authority For Advance Ruling, Odisha In Re: M/s. Indian Metals And Ferro Alloys Limited, 2023 (3) TMI 622).

Author can be reached at :
vsowmya.whitefield@gmail.com

CONSULTATION PAPER ON ESG DISCLOSURES, RATINGS AND INVESTING



CA. Aditya Kumar S

Background: The following article summarizes the consultation paper on ESG related disclosures, ratings and investing as issued by Securities and Exchange Board of India ("SEBI") in February 2023 with a press release on 30th March 2023. World over there has been more discussions on the need for more disclosures relating to ESG related activities as part of the Annual Report or other means. The mutual fund houses have also found ESG as a theme to invest in attracting investors money in large numbers. Further, rating agencies would also need some regulation on ESG ratings which is also gaining steam over a period of time. The Consultation Paper is classified as Part A – ESG Disclosures, Part B – ESG Ratings and Part C – ESG Investing, which are summarized as follows:

Part – A: ESG Disclosures

SEBI has mandated Top 1000 listed companies (by market capitalization) to make Business Responsibility and Sustainability Reporting (BRSR) from FY 2022-23 as a mandatory reporting requirement. The current BRSR requirements is classified into three parts:

- a. Part – A: General Disclosures.
- b. Part – B: Management and Process Disclosures.
- c. Part – C: Principle wise Performance Disclosures, which are further classified as (a) Essential indicators (mandatory), (b) Leadership indicators (voluntary, as of now).

The proposals and possible implications in the reporting requirements are:

Part A: ESG Disclosures

Proposed Regulation	Remarks
<p>BRSR Core:</p> <p>Select Key Performance Indicators (KPI) under E, S and G attributes would be subjected to 'reasonable assurance' (BRSR Core), from the following financial years.</p> <p>As per the press release, Top 150 listed entities (by market capitalization) would have to prepare BRSR Core from FY 2023-24 and shall be gradually extended to the Top 1000 listed entities by FY 2026-27.</p>	<p>Audit Report for BRSR disclosures as per SSAE 3410 Assurance Engagements on Greenhouse Gas Statements, SSAE 3000 Standard on Sustainability Assurance Engagement issued by Institute of Chartered Accountants of India would have to be given, as the case may be.</p> <p>Note: In other geographies, the regulatory agencies have indicated for the first years, the equivalent reporting could be 'limited assurance' and later 'reasonable assurance'.</p>
<p>Quantifiable and outcome-oriented metrics, relevance of the attributes, Comparability across jurisdictions:</p> <p>The proposed amendment would require additional disclosures relating to industry specific KPI to bring in comparability across jurisdictions bringing in more analysis like intensity ratio based on purchasing power parity water consumption, waste generation, etc., to be used.</p>	<p>The introduction of BRSR Core would require companies to ensure (a) that they have the right internal controls to identify and validate the data (b) comparable with the peers in the industry and benchmark (c) benchmarking with other industry (d) facilitating comparison beyond financial numbers leading to possible identification of inefficiencies.</p>

Proposed Regulation	Remarks
<p>More involvement of supply chain:</p> <p>At present, the data relating to value chain partners is included within 'leadership indicators' which is not a mandatory section to be reported in a more comprehensive manner. In view of the above, it is thus proposed to introduce a limited set of ESG disclosures in a gradual manner and on a 'comply-or-explain' basis. For Top 250 companies from FY 2024-25, the companies need 'comply or explain' how they have complied with it with assurance not being made mandatory, but from FY 2025-26 apart from the disclosure of 'comply or explain' assurance is also made mandatory.</p>	<p>Yes, this is a challenge considering the 'value chain' partners could be small firms including proprietorships, partnerships, and other forms of business which may not have all the information required to be given. Further, the awareness of ESG at that level of entities is also absent or very low. Companies find it increasingly difficult to collate the necessary information and bring in awareness and education to their value chain partners to provide such information required.</p>

Author's view:

- a) Auditors: Enhanced responsibilities to ensure that BRSR reports are audited and are in sync with audited financial statements. Auditors may need the help of experts in auditing KPI of BRSR Core depending on the industry in which the client operates and complexities of business.
- b) Management: Be prepared for reporting critical information from leadership indicator to essential indicator which may also require better coordination and communication with business partners to obtain the requisite information. Further, BRSR Core would require KPI to be reported, which will now enable organizations to be comparable; and hence ensuring the information being reported is validated internally before producing the same for audit. Managements may also need experts, depending on the complexity of business etc.,

Part B: ESG Ratings:

In order to enhance transparency in ESG ratings and mitigate conflict of interests in ESG Rating Providers (ERPs) there will be new set of regulations which includes list of 15 ESG related parameters that have an Indian context needs to be considered. The List includes specific parameters on measuring energy consumption, water discharge, waste management, land use, corporate social responsibility, inclusive development, diversity in recruitment, quality of governance including composition of related party transaction etc., The above disclosure is intended to bring in comparative information between entities and helps the stakeholders to measure the relative performance. To facilitate such comparison, the disclosure of KPI should be based or measured on various guidelines including (but not limited to) Energy Conservation Building Code; India specific standards and laws on pollution controls, waste management, ban on use of plastic etc.,

In order to facilitate the credibility of ESG Ratings, ERP shall offer a separate category of ESG Rating called as 'Core ESG Rating' which will be based on the assured parameters under BRSR Core. Investors are increasingly looking into different KPI which, at present, are being reported by companies and not being subject to audit; and so is the case with ESG Ratings which are based on the current 'self-reporting' mechanism. It is proposed that ERP shall also provide a Core ESG Rating, which shall be based on information that are audited.

Author's View: ESG Rating would be done based on specific parameters and would be comparable. ERP to do more research and study about the company and ensure the ratings are appropriate.

Part C: ESG Investing:

Mutual Funds market in India is fairly matured and there are various themes based on which the funds are launched which could include themes relating to banking, infrastructure, small and large cap companies, etc., and off late on those companies which, in their view, are ESG oriented. In the area of ESG investing, AMFI in consultation with SEBI has inter-alia prescribed norms for ESG schemes of Mutual Funds:

- a) Disclosures in Scheme Information Document ('SID') such as scheme name to reflect nature and extent of the scheme's ESG focus, Investment Objective to provide transparency about the nature and extent of the scheme's ESG related investment objectives, Investment Strategy – Exclusions, Integration, Best-in-class and Positive Screening, Impact Investing, Sustainable objectives etc.,
- b) Disclosures related to engagement undertaken by AMCs for ESG schemes (monitoring and evaluation, stewardship and shareholder engagement disclosures, periodic portfolio disclosures and maintenance of ESG policy related to investments).

- c) General obligations related to declaration, resource augmentation, marketing material and development of common sustainable finance-related terms and definition in the line with global standards, etc.,
- d) Standardization of ESG Scoring process by empaneling ERP and publish security wise and scheme wise scores in the monthly portfolio disclosures.
- e) ESG Advisory Committee has provided recommendations on expanding the disclosure norms of ESG funds and on measures that may be brought in to improve transparency, with focus on mitigation of risks of mis-selling and greenwashing and other related areas.

Further, there are other proposed amendments which may require:

- a) Apart from compliance with Stewardship Code in relation to investments in listed companies includes the policy on voting etc., the mutual funds have to disclose 'in favor' or 'in against' votes cast on resolutions in a year by disclosing if the resolution has or has not been supported due to any reasons of ESG; Further where the voting approach for ESG and non-ESG schemes are not similar AMC should provide details and rationale for the same.
- b) The possibility of risk of greenwashing can exist at both investee company level and at the scheme level and hence risk mitigation is required at both the ends. SEBI in the consultation paper has proposed

mandatory assurance of disclosure in BRSR Core for Top 250 companies from FY 2023-24. Further, ERP are proposed to be mandated to provide BRSR Core rating based on information / report that are assured / verified / audited.

- c) Other proposed amendments include ensuring at least 65% of Assets Under Management in companies which are reporting on comprehensive BRSR are also providing assurance on BRSR Core.
- d) The schemes which are not compliant with the above criteria may be provided a window of one year for compliance during which time no fresh investments without BRSR Core disclosures should be taken up.
- e) Security wise BRSR Core rating to be disclosed.
- f) Third party reasonable assurance regarding the scheme portfolio being in compliance with stated strategy and objective of the scheme, may be made mandatory from 1 April 2024.
- g) Certificate from Mutual Fund would be required on an internal ESG Audit which may require certification on compliances.
- h) Annual Fund Manager Commentary to include how ESG Strategy has been applied, specific comments etc.,

Author can be reached at :
aditya@rgnprice.com

Solution to Sudoku - 31 March 2023

8	7	5	9	2	1	3	4	6
3	6	1	7	5	4	8	9	2
2	4	9	8	6	3	7	1	5
5	8	4	6	9	7	1	2	3
7	1	3	2	4	8	6	5	9
9	2	6	1	3	5	4	8	7
6	9	7	4	1	2	5	3	8
1	5	8	3	7	9	2	6	4
4	3	2	5	8	6	9	7	1





Invitation to write articles

KSCAA invites Chartered Accountants and other subject experts to submit articles and share their expertise through KSCAA News Bulletin. The article may cover any topic covering auditing, finance, Tax laws, strategy, technology, Health, RERA, and so on. The authors can share the articles to info@kscaa.com.

Guidelines for Submission of Articles:

- Every article is screened by the committee and a panel of experts, and no assurance can be given for publishing the article.
- The article should be Original; it should not be published or posted elsewhere.
- As a policy, at KSCAA we believe in 'Zero Tolerance for Plagiarism' and any violation shall be construed seriously.
- The committee cannot assure the authors of immediate publishing of the article. A repository of articles would be maintained and accordingly published in the upcoming editions on an appropriate basis as decided by the committee.
- The article should be limited to 1,500 to 1,750 words. The Author is requested to exercise due care, diligence and professional judgement to restrict their article to the above-mentioned limits.
- The article should be submitted only in Word Document.

ADVERTISE WITH US

Get reach to over 3650+ members all over India.

The News Bulletin will also reach various Government Departments. & Ministries.

Soft copy of News Bulletin sent through email to 18000+ Chartered Accountants in India

We solicit to advertise your brand in our monthly News Bulletin. The advertisement tariff is as below:

Full Page Color		Inside Black & White	
Outside Back Cover	Rs. 25,000/-*	Full Page	Rs. 12,000/-*
Inside Back Cover	Rs. 20,000/-*	Half Page	Rs. 6,000/-*
Inside Colour	Rs. 16,000/-*	Quarter Page	Rs. 4,000/-*

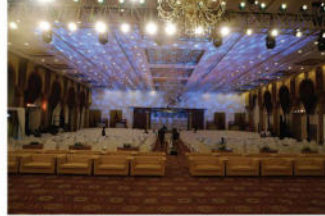
**Plus GST*

For More Enquiries Contact : 95357 15015
or write to us at info@kscaa.com



35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru





35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru





35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru





35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru





35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru





35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru





35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru





35th KSCAA ANNUAL CONFERENCE 2023

17th & 18th March, 2023
White Petals, Palace Grounds, Bengaluru



FINANCIAL REPORTING AND ASSURANCE



CA. Vinayak Pai V

KEY UPDATES A. AS | Ind AS

1. MCA Notification – Companies (Indian Accounting Standards) Amendment Rules, 2023

On 31st March, 2023, the Ministry of Corporate Affairs (MCA) notified the *Companies (Indian Accounting Standards) Amendment Rules, 2023* that come into force w.e.f. 1st April, 2023. The standards subject to amendments are Ind AS 101, Ind AS 102, Ind AS 103, Ind AS 107, Ind AS 109, Ind AS 115, Ind AS 1, Ind AS 8, Ind AS 12 and Ind AS 34.

The gist of key amendments include:

- Ind AS 101 – **Deferred tax related to assets and liabilities arising from a single transaction.**
- Ind AS 1 – Disclosure of accounting policy information – An entity shall disclose **material accounting policy** information.
- Ind AS 8 – **Accounting Estimates**

Link to the Notification -

<https://www.mca.gov.in/bin/dms/getdocument?mcs=ZD-dHHP2R4PluYZQRWmjRpg%253D%253D&type=open>

2. ICAI Exposure Draft – Guidance Note on Transfer of Capital Reserve

On 21st March, 2023, the Institute of Chartered Accountants of India (ICAI) issued an *Exposure Draft (ED)* of *Guidance Note on Transfer of Capital Reserve*.

The Guidance Note ED *sets out principles for transferring capital reserve to free reserve* (including the timing of transfer), considering that specific **Indian Accounting Standards (Ind AS)** require capital reserve to be created towards unrealised profits arising from certain transactions/other events. However, currently, there is no specific guidance on their subsequent transfer to retained earnings/free reserves.

The summary of recommendations is as follows:

- Any reserve created per the requirements of the Companies Act/other applicable law cannot

be transferred to other reserves **except as per the requirements of the applicable law.**

- Few other reserves, which are **purely capital in nature** (e.g., capital profit on a reissue of forfeited shares), **cannot be transferred** to free reserves/retained earnings as the underlying transaction is completed.
- For **capital reserves created as per Ind AS/erstwhile Companies (Accounting Standards) Rules, 2006**, the **amount can be transferred to retained earnings/other free reserves** only when the **following two conditions are met:**
 - a) **The company has realised the underlying amount.**
 - b) **The amount has become available for distribution under the Act/other applicable laws.**

Link to the ED -

<https://resource.cdn.icai.org/73383research59173.pdf>

3. NFRA Circular – Instances of non-compliance with Ind ASs on Accounting Policies for measurement of Revenue from Customer Contracts and Trade Receivables

On 29th March, 2023, the National Financial Reporting Authority (NFRA) issued Circular No. NF-25011/1/2023-O/o Secy-NFRA noting **instances of wrong accounting policies** by a few companies:

- Ind AS 115, Revenue from Contracts with Customers requires revenue recognition based on the transaction price. The NFRA has noticed that **many companies** accounting policies have been **wrongly stated that revenue is recognized and measured at the fair value of the consideration.**
- As per Ind AS 109, Financial Instruments, trade receivables shall be initially measured at their transaction price (unless it contains a significant financing component). The NFRA has noticed that **many companies erroneously have stated that trade receivables are initially recognized/measured at fair value.**

Link to the Circular-

<https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc-6b56a45a56c59fafdb/uploads/2023/03/2023032940.pdf>

4. EAC Opinion – Classification of Rail Corridor Asset

The April 2023 edition of the ICAI Journal has carried an Expert Advisory Committee's (EAC) opinion – *Classification of Rail Corridor Asset in the books of account of the Company as tangible/intangible asset and its depreciation/amortisation* (Ind AS). A summary of generic key takeaways from the opinion is summarised herein below:

- Under the Concession Arrangement in the extant case, **the grantor** (Ministry of Railways) **controls and regulates what services must be provided** using the Rail System, **controls to whom the services must be provided** using the Rail System and determines the tariff. Further, the grantor also **controls a significant residual interest** in the Rail System at the end of the term of the Concession Agreement. Therefore, the EAC is of the view that **Appendix D to Ind AS 115 is applicable**.
- As per the Concession Agreement, the grantor shall pay the Company 50% of the revenue apportionment from freight operations on the Rail System. Thus, the **Company's cash flows depend on usage of the system and the grantor neither contractually guarantees to pay the operator, specified or determinable amounts** nor any shortfall between amounts received from public service users and specified or determinable amount. Therefore, in the extant case, the Company does not have an unconditional right to receive cash or other financial asset and, accordingly, the Concession Agreement **does not result in a financial asset for the Company; rather, it would result in an intangible asset for the Company**.
- The Company's current **depreciation/amortisation method based on target traffic does not comply** with the requirements of Ind AS or Schedule II to the Companies Act. An appropriate amortisation method in accordance with Ind AS 38 needs to be followed.

B. ASSURANCE

5. ICAI - Implementation Guide to Standard on Auditing (SA) 580, Written Representations

On 7th March, 2023, the ICAI published an *Implementation Guide to Standard on Auditing (SA) 580, Written*

Representations. The Guide provides practical guidance on implementing the principles laid down by SA 580 to enable auditors to comply with the standard's requirements effectively.

Link to the Implementation Guide-

<https://resource.cdn.icai.org/73178aasb59027.pdf>

6. ICAI - Implementation Guide on Reporting under Rule 11(g) of the Companies (Audit and Auditors) Rules, 2014

On 28th March, 2023, the ICAI released an *Implementation Guide on Reporting under Rule 11(g) of the Companies (Audit and Auditors) Rules, 2014*, to enable auditors to comply with the related reporting requirements. [Rule 11(g) requires auditors to report on the use of accounting software by a Company for maintaining its books of account which has a feature of recording audit trail.]

Link to the Implementation Guide-

<https://resource.cdn.icai.org/73438aasb59254.pdf>

7. ICAI – Revised 2023 edition of Guidance Note on Audit of Banks

On 16th March, 2023, the ICAI released a revised (2023) edition of the *Guidance Note on Audit of Banks*. It is divided into Sections: Section A - Statutory Central Audit and Section B - Bank Branch Audit.

Link to the Guidance Note-

<https://resource.cdn.icai.org/73309aasb-gnab2023-b.pdf>

8. IESBA Q&A Publication – Revisions to the definitions of Listed Entity and Public Interest Entity in the Code (International Code of Ethics for Professional Accountants)

On 10th March, 2023, the Staff of the International Ethics Standards Board for Accountants (IESBA) issued a Question and Answer publication, *Revisions to the Definitions of Listed Entity and Public Interest Entity (PIE) in the Code*, designed to highlight and explain aspects of the PIE revisions in the International Code of Ethics for Professional Accountants. It aims to assist national standards setters, professional accountancy organisations, and firms in adopting and/or implementing the PIE revisions.

The PIE revisions are effective for audits of financial statements for periods beginning on or after 15th December, 2024.

Link to the Q&A publication-

<https://www.ethicsboard.org/publications/revisions-definitions-listed-entity-and-public-interest-entity-code>

C. NFRA ORDERS

9. NFRA - Orders u/s 132(4) of the Companies Act

NFRA has, by separate orders, imposed on two CAs a **monetary penalty of ₹ 1,00,000 each and debarment for one year** from being appointed as an auditor/internal auditor or from undertaking any audit in respect of financial statements or internal audit of any company.

The major lapses and violations by the CA (Engagement Partner) in each Order primarily relate to the **acceptance of audit appointment** (Statutory Branch Auditor of DHFL) **without valid authorization** and without complying with ethical requirements and issuing an audit report in violation of the Act and **failure to comply with Standards on Auditing**. [Order Nos. NF-21/1/2022/02 and NF-21/1/2022/02 dated 31st March, 2023]

10. NFRA - Order u/s 132 of the Companies Act - Mahindra Holidays Resorts India Limited

On 29th March, 2023, NFRA passed the following directions to MHRIL and its auditor:

The Company shall, going forward, thoroughly, and proactively **review its accounting policies and practices in respect of segment reporting**, as they relate to the application of Ind AS 108, keeping in mind NFRA's findings relating to deficiencies in accounting disclosures.

MHRIL's review and the changes brought in its accounting practices and reporting **should be properly documented**, especially w.r.t. the **CODM's exercise of monitoring and control**, both at the aggregated and disaggregated, granular level, and such documentation shall be verified by MHRIL's statutory auditor.

D. IFRS

11. IASB - Guidance for Developing and Drafting Disclosure Requirements in IFRS Accounting Standards

On 8th March, 2023, the International Accounting Standards Board (IASB) published *Guidance for Developing and Drafting Disclosure Requirements in IFRS Accounting Standards* designed to aid it in developing IFRS Accounting Standards that would enable reporting entities to make **better judgements about which information is material and should be disclosed**, thereby providing more useful information to investors.

This improved approach is **part of the IASB's Targeted Standards-level Review of Disclosures Project**.

Link to the Guidance -

<https://www.ifrs.org/content/dam/ifrs/groups/iasb/guidance-for-developing-and-drafting-disclosure-requirements-in-ifrs-accounting-standards.pdf>

12. IASB Exposure Draft - Proposed amendments to IFRS 9 and IFRS 7

On 21st March, 2023, the IASB issued an Exposure Draft, *Amendments to the Classification and Measurement of Financial Instruments - Proposed Amendments to IFRS 9 and IFRS 7*.

The proposed amendments include: **1) Clarifying the classification of financial assets with environmental, social and corporate governance (ESG) and similar features**— The proposed amendments clarify how the contractual cash flows on such loans should be assessed. **2) Settlement of liabilities through electronic payment systems** - The ED proposes clarifications as to how this should be accounted for. The IASB also decided to develop an accounting policy option to allow a company to derecognise a financial liability before it delivers cash on the settlement date when specified criteria are met.

Link to the Exposure Draft -

<https://www.ifrs.org/content/dam/ifrs/project/amendments-to-the-classification-and-measurement-of-financial-instruments/iasb-ed-2023-2-amendments-classification-and-measurement-financial-instruments.pdf>

13. IASB Project - Climate-related risks in financial statements

On 23rd March, 2023, the IASB added a project to its work plan to explore **whether and how companies can provide better information about climate-related risks in their financial statements**.

The project will research to what extent the educational material published in 2020 (*i.e., Effects of climate-related matters on financial statements*) is helping companies reflect the effects of climate-related risks in the financial statements and what actions, if any, the IASB could take to further improve information about these matters.

Link to the Announcement -

<https://www.ifrs.org/news-and-events/news/2023/03/iasb-initiates-project-to-consider-climate-related-risks-in-financial-statements/>

E. SUSTAINABILITY REPORTING

14. IOSCO - Report on International Work to Develop a Global Assurance Framework for Sustainability-related Corporate Reporting

On 28th March, 2023, the International Organization of Securities Commissions (IOSCO - the leading international policy forum for securities regulators) published a *Report on International Work to Develop a Global Assurance Framework for Sustainability-related Corporate Reporting*.



Since 1957



The report elaborates on IOSCO's support for the ongoing work of the international standard setters – the IAASB and the IESBA– to develop profession-agnostic assurance and ethics (including independence) standards over sustainability-related information.

Link to the Report-

<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD729.pdf>

F. USGAAP/ASSURANCE

15. FASB Exposure Draft – Improvements to Income Tax Disclosures

On 15th March, 2023, the Financial Accounting Standards Board (FASB) issued an **Exposure Draft** of Proposed Accounting Standards Update, **Income Taxes (Topic 740 of US GAAP), Improvements to Income Tax Disclosures**.

The main provisions in the ED are: 1) **Rate Reconciliation** - Entities would be required, inter alia, to disclose a tabular reconciliation, using both percentages and reporting currency amounts, following specific categories: State and local income taxes net of federal income tax effect, foreign tax effects, enactment of new tax laws, effect of cross-border tax laws, tax credits, valuation allowances, non-taxable or non-deductible items and changes in unrecognised tax benefits. 2) **Income taxes paid** - All entities are required to disclose the following information about income taxes paid: a) the year-to-date amount of income taxes paid disaggregated by national, state, and foreign taxes on both an interim and annual basis and b) the amount of income taxes paid disaggregated by individual jurisdictions in which income taxes paid is equal to or greater than 5 percent of total income taxes paid, on an annual basis.

16. FASB Exposure Draft (ED)– Accounting for and disclosure of Crypto Assets

On 15th March, 2023, the FASB issued an ED of Proposed Accounting Standards Update, **Intangibles – Goodwill and other – Crypto Assets (Subtopic 350-60 of USGAAP) – Accounting for and Disclosure of Crypto Assets**.

Under extant USGAAP, crypto assets within the scope of the amendments **are accounted for as indefinite-lived intangible assets**. Those assets are tested for impairment annually. **The amendments** in the proposed Accounting Standards Update would require an entity to **measure certain crypto assets at fair value at each reporting period and recognize changes in fair value in net income**. The proposed amendments also require that an entity **provide enhanced disclosures** which would provide investors with relevant information to analyse and assess the exposure and risk of significant individual crypto asset holdings.

17. FASB Accounting Standards Update – Amendment to Leases standard

On 27th March, 2023, the FASB issued Accounting Standards Update (ASU) No. 2023-01 that amends Topic 842, Leases of USGAAP. The gist of the amendments are:

Terms and conditions to be considered - The ASU provides private companies that are not conduit bond obligors with a practical expedient to use the written terms and conditions of a common control arrangement to determine whether a lease exists.

Accounting for leasehold improvements - The amendments require that leasehold improvements associated with common control leases be a) Amortized by the lessee over the useful life of the leasehold improvements to the common control group as long as the lessee controls the use of the underlying asset through a lease and b) Accounted for as a transfer between entities under common control through an adjustment to equity if, and when, the lessee no longer controls the use of the underlying asset.

The amendments are effective for fiscal years beginning after 15th December, 2023. Early adoption is permitted.

18. FASB Accounting Standards Update – Accounting for investments in Tax Credit Structures using the Proportional Amortization Method

On 29th March, 2023, the FASB issued an Accounting Standards Update (ASU No. 2023-02) amending Topic 323 of USGAAP (Investments – Equity Method and Joint Ventures) – **Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method**.

The amendments **permit** reporting entities **to elect to account for their tax equity investments**, regardless of the tax credit program from which the income tax credits are received, **using the proportional amortization method if specified conditions are met**. Reporting entities were previously permitted to apply the proportional amortization method only to qualifying tax equity investments in low-income housing tax credit (LIHTC) structures.

19. PCAOB – Proposes modernization of Standards addressing core auditing principles and responsibilities

On 28th March, 2023, the US Public Company Accounting Oversight Board (PCAOB) issued for public comment a proposed new standard, **AS 1000, General Responsibilities of the Auditor in Conducting an Audit**.

The amendments inter alia would (1) reinforce and clarify the engagement partner's responsibility to exercise due professional care related to supervision and review and (2) accelerate the documentation completion date by reducing

the maximum period for the auditor to assemble a complete and final set of audit documentation from 45 days to 14 days.

G. OTHER USEFUL PUBLICATIONS

20. ICAI - FAQs on Important Principles enunciated in Standards on Auditing w.r.t. Auditor's Opinion and Audit Sampling. [Mar, 2023]
21. IAASB – Digital Technology Market Scan: Digital Assets. [6th March, 2023]
22. UK Endorsement Board (UKEB) – Accounting for Intangibles, UK Stakeholders Views. [22nd March, 2023]
23. COSO – Achieving Effective Internal Control Over Sustainability Reporting (ICSR). [30th March, 2023]
24. UK FRC – Our Approach to Audit Supervision. [31st March, 2023]

H. GLOBAL REGULATORY ACTIONS

1. US SEC -The Securities and Exchange Commission alleged that three executives of a shipbuilder Company from at least January 2013 through July 2016, engaged in a scheme to artificially reduce the cost estimates to complete certain shipbuilding projects for the US Navy by tens of millions of dollars. The complaint alleges that certain executives knew that the Company's shipbuilding costs were rising and higher than planned, but they directed others to arbitrarily lower the cost estimates to meet the company's revenue budget and revenue projections. The complaint further alleges that the parent company prematurely recognised revenue and, as a result, met or exceeded analyst consensus estimates for earnings before interest and tax (EBIT), a key financial metric for the company. [SEC Release dated 31st March 2023.]
2. US PCAOB -The PCAOB censured an Audit Firm and imposed a civil money penalty of \$100,000 based on its findings that: 1) pursuant to Section 105(c)(6) of the Sarbanes-Oxley Act of 2002, the Audit Firm failed to reasonably supervise two accounting firms that were not registered with the PCAOB yet played a substantial role in 12 issuer audits for fiscal years 2017 and 2018, and 2) the Audit Firm violated the Board's auditing and quality control standards. [PCAOB Release No. 105-2023-001 dated 27th March, 2023.]

Author can be reached at :
vinayakpaiv@hotmail.com

Income Tax Savings Schemes

54EC आर.ई.सी. REC REC Capital Gains Bonds
5 years, 5% Annual Interest

80C ELSS, PPF, Life Insurance

80CCD National Pension Scheme

Fixed Income

Trust u/s 11(5) Trust Deposits Eligible u/s 11(5)
HDFC LIC Housing ICICI Home Finance SUNDARAM HOME

RBI Reserve Bank of India Bonds
7 years, Floating rate 7.15% Half-yearly Interest

FD NBFC BAJAJ FINSERV Mahindra FINANCE

SOVEREIGN GOLD BOND Sovereign Gold Bonds
8 years, 2.50% Half-yearly Interest, Maturity 'Tax-free'

Growth Option

Mutual Funds

Large Cap / Mid Cap / Small Cap / Flexi Cap / ELSS Funds

AXIS MUTUAL FUND HDFC MUTUAL FUND ICICI PRUDENTIAL MUTUAL FUND KOTAK Mutual Fund
MIRAE ASSET PPFAS MUTUAL FUND SBI MUTUAL FUND A PARTNER FOR LIFE

For further information, please contact

Kiran Boal 98803 93743 wecare@wealthlab.co.in

Achieve your financial goals with proper financial planning

Tax Savings Wealth Creation
Home Plan Retirement Plan
Wealth Protection Life / Health Insurance
Marriage Plan Children's Education

WEALTH LAB ₹

RERA - YEAR END COMPLIANCES



CA. Vinay Thyagaraj

Wishing the members and readers abundant financial endeavours, opportunities for wealth creation and wealth preservation. Greater financial peace of mind and contentment. May all your financial wishes come true!

We all have started a new financial year 2023-24 and in the process of closure of books of accounts for the previous financial 2022-23. Financial year end closure compliances refer to the various tasks and activities that need to be completed by an entity/person at the end or after its financial year to comply with legal, regulatory, accounting requirements and to report to all stake holders.

The reporting being specific to industry, the regulators constantly monitoring the developments of the industry and the eco-system. Real estate is not an exception to it. Post implementation of RERA, all the stakeholders of the real estate are aware about the RERA registration, periodical updates, funds utilisation reporting, approval of modification of plans & specifications, approval for change of promoters in the project, compliances to the advertisement and adherence to terms of the agreement of sale.

RERA being the new statute and regulators are notified the regulations, circulars, notifications etc based on their experiences, stakeholders demand and depending on the situation or circumstances that arise from time to time.

In this article, we would like to bring the important data points/details to be considered by the Real Estate entities (promoters of the real estate projects) considering the various aspects as mandated under RERA as part of the annual closure activity. The promoters and professionals shall consider and comply with the Regulatory Compliances to mitigate the risks -

1. Prior Registration of the Real Estate project -

- a. Section 3(1) of the RERA Act 2016 mandates the prior registration of the real estate project (building or plotted Land) before sale, marketing, invitation, collection of advances -

- i. It is important for the professionals to consider while reporting and certification, whether the promoter has advertised or collected money prior to registration of the project with the RERA Authorities. The same can be verified by looking at the bank account receipt, date of agreements of sale entered if any.
 - ii. The authorities have levied penalty on the project promoters for advertisement or collection of money without obtaining the RERA registration.
 - iii. Further the promoter might have allotted the unit against the advance / borrowing. If so, further efforts should be made and verify the transaction to satisfy and comply with Section 3(1) Eg., Balance Sheet of 31st Mar 2022 showing under Borrowings or current liabilities. During 2022-23, unit is allotted against such borrowings.
2. **Financial management under RERA - Section 4(2)(L) (D) of the RERA Act 2016 mandates the promoter to deposit 70% of the amount realised from the allottees to the project RERA designated bank account from time to time -**
- a. Verify the total sales register or collection register.
 - b. Verify amount credited to project RERA designated bank account (RERA designated bank account can be verified by visiting <https://RERA.karnataka.gov.in/viewAllProjects>)
 - c. Reconcile the collection and 70 % deposit. variances if any, note and report the reasons for such differences.
 - d. Verify whether the promoter has collected the professional certificate from Engineer, Architect and Chartered Accountant prior to withdrawal of funds from the project RERA designated bank account from time to time. Excess withdrawal at any point of time shall be recorded and reported.

- e. In case of Joint Development agreement, collect the details of units sold and amount realised by the landowner under Area Sharing arrangements, whether the 70 % of the realisation of landowner units is deposited into project RERA designated bank account. If not let the developer communicate and collect necessary undertaking and documents to protect from penal consequences of non compliance of section 4(2)(L)(D) of the RERA Act 2016 (REFER RERA Bank Account directions 2020 issued by K RERA)

3. Compliance checklist and various Reconciliation with books for the purpose of RERA –

Sl No	Stakeholder/s	Reconciliation items
1	RERA Authority - Compliance with Regulatory Requirements:	<p>Ensuring compliance with various regulatory requirements, such as</p> <ol style="list-style-type: none"> filing of quarterly updates – annual accounts and audit reports application for extension of end date – Section 6 further extension of end date of the project – Section 7 Reporting and modification of plan and specifications in the project – Section 14 Advertisement guidelines – Section 11 and Section 12 Honouring the orders passed by the Authority or Adjudication officer for the complaints filed under Section 31 Engaging and Payment of commission or brokerage only to RERA Registered Agents Following the agreement of sale notified by RERA Authorities
2	Bankers – Lenders	<p>Inventory and receivable statements to arrive at Drawing Power. This document should be tallied and reconciled with the reports submitted to RERA Authorities -</p> <ol style="list-style-type: none"> Total number of Sold units / inventories in the project. Communication to the lenders for NOC from the lenders for the units sold and agreements entered. Receivables from the Sold units Vis-à-vis books of accounts Unsold inventory as per books of accounts and average value of the receivables from unsold inventory to cover the balance / outstanding loans or borrowings. Status of construction progress of the project.

Sl No	Stakeholder/s	Reconciliation items
3	GST	<ol style="list-style-type: none"> Percentage of completion of the project. Total amount received from the customers and GST discharged on the amount received or due. Reporting of RCM transaction and discharge of liability (Legal Fees, Development rights, transport expenses, etc) Availing the eligible Input Tax credits Satisfaction of 80 % criteria of purchases from registered vendors. Discharge of unregistered GST purchases if any (lower than 80 % criteria) Reversal of ineligible GST Input Tax Credits Reconciliation and allocation of GST in case of Mixed Development Project (Residential and Commercial) Reporting of occupancy or completion certificate (the gst officers are collecting the data from the RERA portal etc)
4	TDS deducted by the buyers @ 1 % U/s. 194 IA of Income Tax Act 1961	<ol style="list-style-type: none"> Reconcile the total receipt of money from the allottees. Check 26 AS whether 1 % has been credited against the receipt from the customers/allottees. If TDS amount is not credited, communicate the same to the allottees and insist them to remit and share the details. This will helps the revenue reconciliation vis-à-vis TDS Credits in 26 AS
5	Unsold inventory	<ol style="list-style-type: none"> Available or unsold inventory shall reconcile with RERA March quarter CA certificate with the books of accounts.
6	Revenue Reconciliation	<ol style="list-style-type: none"> Recognition of revenue as per Accounting Standard and Tax Standards and reconciliation with the data as provided to RERA – <p>i.e., total value as per agreement of sale, % of completion of the project development work, realisation of money from the allottees vis-à-vis revenue to be recognised.</p> <p>Prior to RERA income or GST Authorities relying on the data as provided by the promoters. Post RERA, the data is available in a public domain or can be collected from the RERA Authorities.</p>

Sl No	Stakeholder/s	Reconciliation items
7	Provision of expenses for the delay compensation (delay in delivery of the unit to the allottees – a. Based on Terms of the Agreement b. Based on the orders of the Authority or Adjudicating officer	a. Provision of expenses for the delay compensation payable to the allottees as per the terms of the agreement and as per the RERA Act 2016 (SBI MCLR + 2% interest) – Section 13 read with K RERA Rules 8A b. Applicable GST payable on compensation for such delayed delivery of the units in the project c. TDS by the promoter on such provision of expenses
8	Management Information System – MIS to Investors etc	a. During the financial year, there may be instances of sharing MIS information with the investors etc., b. It is advisable to reconcile the same with the data as reported with RERA and also as per books of accounts of the promoter.

Sample Checklists -
(Similar checklists can be prepared for each of the compliance under RERA and capture the details)

Registration Checklist(in case project registered during the FY 2022-23)	Estimated cost of Land As per RERA Registration	Estimated cost of Construction As per RERA Registration	Project RERA Designated Bank Account	Number of Inventory
Project RERA Registration Number and Project Name	Rs. XXXX	Rs. XXXX	1. Bank Name 2. Account Number 3. IFSC Code	X X X Units

Quarterly Updates	June 2022	September 2022	December 2022	March 2023
Due Date of Filing	15 th July 2022	15 th October 2022	15 th January 2023	15 th April 2023
Actual Filing Date	DD/MM/YYY	DD/MM/YYY	DD/MM/YYY	DD/MM/YYY

Quarterly Updates	June 2022	September 2022	December 2022	March 2023
Architect Certificate - % of Completion	XX %	XX %	XX %	XX %
Engineer Certificate – Amount	Rs.XXXX	Rs.XXXX	Rs.XXXX	Rs.XXXX
CA Certificate-				
Construction cost incurred	Rs.XXXX	Rs.XXXX	Rs.XXXX	Rs.XXXX
Total Cost Incurred	Rs.XXXX	Rs.XXXX	Rs.XXXX	Rs.XXXX
Total % of Completion	XX %	XX %	XX %	XX %
Amount Eligible to withdraw	Rs.XXXX	Rs.XXXX	Rs.XXXX	Rs.XXXX
Actual withdrawn	Rs.XXXX	Rs.XXXX	Rs.XXXX	Rs.XXXX
Balance Available to withdraw				
Observation / Remarks				

Advertisement	Mode Print – Hoarding, Newspaper, Social media, website, FM, Calls etc	RERA Registration Number as per RERA Guidelines	Remarks / Observation
Date of Advertisement			
DD/MM/YYYY			

We agree that there will be difference of values as per RERA vis-a-vis books of accounts, if so, we recommend the promoters to keep the reconciliation statement in order to protect themselves in the future from any inadvertent notices from any of the tax authorities (Income tax / GST). Professionals should collect those reports, verify and issue the Certificates or Audit reports accordingly.

Author can be reached at :
vinay@vnnv.ca

INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA INTERNATIONAL ISSUES RELATING TO PATENTS (PART - XXXII OF IPR SERIES)



Adv. M. G. Kodandaram, IRS
Assistant Director (Retd.)

Limitations in Protection of IPRs

In this series so far, we have learnt about the various types of IPRs grantable to applicant entities /persons under Indian IPR laws. We have also explored the ways of applications and usages of IPs for creation of wealth. Commercialising of the IPRs by the owners, are going to enhance the profitability of business ventures, especially those in the MSME sector. The various legal approaches available for seeking protection of these rights have also been deliberated. We have further examined the technological tools that could be employed/ used to further strengthen the valuable IP assets. In the previous part all the supportive schemes / measures extended by the Union government and State Governments with a view to create a conducive and encouraging IP environment to MSME sector have been elucidated.

The IPRs granted under Indian laws are protected within geographical limits of India as IP rights, being territorial rights, are enforceable within the country. However, the trade by the business entities is not limited to National boundaries. As the international trade is blooming and our entities must grab the opportunity around the world, it is appropriate to understand the means available for extension of the IP rights beyond the National boundaries.

As per the economic surveys in the last couple of years indicate, India's exports, both goods and services, have been exceptionally strong. As the Indian business expands, protection of the IP assets around the globe becomes more critical. In other words, in cases of international business, the IPRs of the Indian entities need appropriate protection in other countries also. However, there is no scope for an international system of granting universal IPRs. Therefore, it is necessary to understand the limited, but important modalities to seek protection to IPs that could be adopted under international business environments, with a view to

expand such protection across the globe. The further parts of the series are going to be devoted, starting from protection to patents, to IP protective measures existing in the global business so that the Indian IP and the owners play a vital role in accelerating their global trade.

Patent Protection Outside India

As we know, Patent is a statutory right for an invention granted for a limited period of time (20 years from the date of application) to the patentee by the Government, in exchange of full disclosure of invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his/her consent. The patent system in India is governed by the Patents Act, 1970 and protection granted is territorial in nature, effective only within the political boundaries of India and there is no concept of global patent. Therefore, the Patents should be applied for and obtained in each country where the applicant requires protection of his/her invention. This measure involves prohibitive costs, and it may be very difficult for the MSMEs to follow.

Businesses, as we are aware, use the patents as a key element to protect their inventions and innovations in new products and processes. It is a fact that more than a million patents are filed globally every year for new products, processes, applications and uses by the entities to enhance and leverage their positioning in the market. With huge investments deployed in development of patents securing protection to patents has become a necessity for the survival of an organization. But the same may not be viable for an entity in the MSME sector as the costs become prohibitive. In this scenario, economic alternates available for seeking global protection for patents becomes an important issue.

The options available at present to seek protection of an invention in one or more foreign countries are as follows:



(a) **Separate patent applications** can be filed at the same time in all the countries where one would like to protect his/her invention. The patent rights are territorial in nature, and the subject matter are governed by the domestic laws of each country. Under the traditional system, an individual application needs to be filed in each country where patent protection is sought and this is referred to as ordinary application procedure.

(b) **The Paris Convention for the Protection of Industrial Property**, established in 1883, provides for 12 months' time to file the patent application in the member countries from the date of filing of the earliest application. A patent application can be filed in a member country of Paris Convention country, followed by filing of separate corresponding patent applications in other Convention countries within 12 months taking priority from its filing date (called priority date). This is normally called as Convention application. This is better than the national applications indicated at (a) above.

(c) **An international patent application under PCT** can be filed at the Indian Patent Office, which is simpler, easier, and more cost-effective than options at (a) or (b) above. This could be the beneficial way for the MSMEs to follow for protecting patents in the country where they want to expand their business. More details of this application procedure are narrated in the following part.

PCT System for Patents

The Patent Cooperation Treaty (PCT) is a multilateral treaty that was concluded in Washington in 1970 and entered into force in 1978. It is administered by the International Bureau of the World Intellectual Property Organization (WIPO), whose headquarters are in Geneva (Switzerland). The Patent Cooperation Treaty (PCT) as on date has more than 150 Contracting States, which are bound with certain formal requirements set out in the Treaty and Regulations.

The PCT procedure consists of two main phases. It starts with the filing of an international application and ends with the grant of a number of national and/or regional patents. The terms "international phase" and "national phase" indicate the short, but popular expressions of the above two-fold approaches. PCT makes it possible to seek patent protection for an invention simultaneously in many countries by filing a single 'international patent application' instead of filing several separate National or Regional patent applications. However, granting of patents remains under the control of the National or Regional patent offices after

the corresponding - national phase application has been filed and the national phase application is assessed as per patent law of that jurisdiction. In other words, the PCT route facilitates the applicant an international filing date in all the member countries and allowing the late entry (generally up to 30/31 months) to the national offices for seeking national patents without affecting the priority date.

As stated above, PCT does not provide for grant of any international patent. The patent related subject matter (patents for inventions, Utility Models, Petty patents, inventor's certificates, Certificate of Addition etc., are protected under PCT. Further, it is not possible to define the form of protection at the PCT stage and can be specified during the national filing phase only. Filings or Registrations of the other forms of IP protection like Copyright, Trademarks, Geographical Indications, Trade secrets etc., are not covered under this system. However, in PCT system, one can include the subject matter of an Invention for which patent protection can be granted in any of the member states. For example, software per se is not patentable in India but a PCT application can be filed to obtain the protection in those countries where such protection is possible.

In general terms, an international patent application, complying with the minimum requirements for obtaining an international filing date, has the effect of a national / patent application (and certain regional patent applications) in all PCT Contracting States. An international patent application must be prepared in accordance with certain formal requirements set out in the Treaty and Regulations, which have become international standards effective in all the PCT Contracting States. If these requirements are complied with, subsequent adaptation to varying national (or regional) formal requirements (and the cost associated therewith) will not be necessary.

From the above explanations it is evident that the use of the PCT saves effort - time, work - for any applicant seeking protection for an invention in several countries. The saving arises from the fact that, under PCT, the applicant files one application - the international application - in one place, in one language and pays one initial set of fees, and that this international application has the effect of a national or regional application, which, without the PCT, the applicant would have to file separately for each country or region. Use of the PCT also helps the applicant to make decisions about the progress of the application before the various national Patent Offices in the national phase of processing.

PCT Application Procedure

The PCT procedure includes the following stages:

a. Filing of prescribed application with fee: File an international application with a Receiving office (RO)/ Indian patent office (IN) national patent Office or directly with International Bureau (IB) of WIPO, complying with the PCT formality requirements and fees. In India PCT application are filed at appropriate patent offices decided based on territorial limits. PCT applications can be filed electronically with RO/IN or RO/IB which accepts such filings. Indian Patent office does not accept full e- filing of PCT international application. WIPO web service (ePCT-filing) helps to prepare applications by automatically validating the entered data and drawing your attention to incorrectly or inconsistently completed parts. WIPO's PCT-SAFE software offers PCT user to prepare international application in electronic form (<http://www.wipo.int/pct-safe/en/>).

b. International Search: An International Searching Authority (ISA) identifies the published patent documents and technical literature (prior art) which may have an influence on whether your invention is patentable and establishes a written opinion on your invention's potential patentability. Indian Patent office, Delhi Branch performs the function of ISA on receipt of prescribed fee specified in Fifth Schedule of patent act 1970.

c. International Publication: After expiration of 18 months from the earliest filing date (Priority Date), the content of your international application is disclosed to the world.

d. International Preliminary Examination (optional): one of the ISAs on request carries out an additional patentability analysis, usually on an amended version of your application. Indian Patent office, Delhi Branch performs the function of International Preliminary Examination (IPEA) on receipt of prescribed fee specified in Fifth Schedule of patent act 1970.

e. National Phase: After the end of the international PCT procedure, usually at 30/31 months from the earliest filing date of your initial application, from which one is eligible to claim priority, may start to pursue the grant of patents directly before the national (or regional) patent Offices of the countries in which one want to obtain them.

f. In India, 31 months is maximum time limit to enter national phase. To enter national phase an application corresponding to an international application is made in Form 1.

PCT international patent application may be filed by a national or resident of a PCT Contracting State. If there are several applicants named in the international application, only one of them needs to comply with this requirement. PCT Filing route is especially cost effective if the patent protection is sought in more than five countries. PCT applicants generally pay three types of fees when they file their international applications:

- (a) An international filing fee.
- (b) A search fee which can vary from ISA chosen, and
- (c) A small transmittal fee which varies depending on the receiving Office.

PCT fee reductions are available to applicants who file electronically, based on the type of filing and the format of the application submitted. In addition, to encourage the use of the PCT System by applicants from developing countries fee reductions of 90% for certain fees, including the international filing fee, are available to natural persons. Some ISAs also provide for a reduction of the international search fee if the applicant or applicants are nationals or residents from certain countries. For more details refer Annex D of the PCT Applicant's Guide WIPO available @ <https://pctlegal.wipo.int/eGuide/view-doc.xhtml?doc-code=pctip&doc-lang=en&doc-type=guide>

In most cases, up to an additional time of 18 months from the time one files his/her international patent application (or usually 30/31 months from the filing date of the initial patent application of which you claim priority) before starting of national phase procedures with individual patent Offices and to fulfil the national requirements are allowed. This additional time can be useful for evaluating the chances of obtaining patents and exploiting invention commercially in the countries in which you plan to pursue patent protection, and for assessing both the technical value of your invention and the continued need for protection in those countries. Since, in the national phase, each patent Office is responsible for examining your application in accordance with national or regional patent laws, regulations and practices, the time required for the examination and grant of a patent varies across patent Offices.

Generally, patent applicants who wish to protect their invention in more than one country usually first file a national or regional patent application with their national or regional patent Office, and within 12 months from the filing date of that first application, file their international application under the PCT. The effect of claiming the



priority of an earlier patent application is that a patent shall not be invalidated by reasons of any acts accomplished in the interval, such as another filing, the publication or sale of the invention.

Permission to Apply for Patents Abroad.

Residents of India require prior permission to apply for patents outside India under section 39 of the Patents Act, 1970 under following circumstances: (a) The applicant or inventor is Indian resident; (b) Applicant does not wish to file patent application in India prior to filing outside India; (c) If the applicant is Indian resident, a patent application has been filed in India and six weeks period is not yet over from that date; (d) The invention relates to atomic energy or defence purpose. It must be noted that if the invention is relevant for Defence or Atomic Energy purpose, no permission shall be granted without the consent of Central Government. Normally, under the following circumstances, it is not necessary to obtain prior permission from the Patent Office to file patent application abroad: (a) Applicant is not Indian resident and invention is originated abroad; (b) If the applicant is Indian resident and filed patent application has been in India before filing the application outside India and six weeks period is over from that date; (c) The invention does not belong to Atomic Energy or defence purpose.

International Search Report

As a rule, an international search is carried out for all international applications. For every international application, the ISA will establish, a preliminary and non-binding opinion on whether the invention appears to meet the patentability criteria considering the search report results. The written opinion, which is sent to applicant together with the international search report, helps to understand and interpret the results of the search report with specific reference to the text of your international application, being of special help to you in evaluating your chances of obtaining a patent.

A PCT international search is a high-quality search of the relevant patent documents and other technical literature in those languages in which most patent applications are filed (Chinese, English, German and Japanese, and in certain cases, French, Korean, Russian, and Spanish). The high quality of the search is assured by the standards prescribed in the PCT for the documentation to be consulted, and by the qualified staff and uniform search methods of the ISAs, which are all experienced patent Offices. The results are published in an international search report and a written opinion of the ISA on the potential patentability of your invention.

The international search report consists mainly of a listing of references to published patent documents and technical journal articles which might affect the patentability of the invention disclosed in the international application. The report contains indications for each of the documents listed as to their possible relevance to the critical patentability questions of novelty and inventive step (non-obviousness). Together with the search report, the ISA prepares a written opinion on patentability, which will give the applicant a detailed analysis of the potential patentability of his/her invention. The international search report and the written opinion are sent to applicant by the ISA.

An international search report which is favourable, that is, in which the documents (prior art) cited would appear not to prevent the grant of a patent, assists in the further processing of patent application in those countries in which you wish to obtain protection. If a search report is unfavourable, one will have the opportunity to amend the claims in your international patent application, to better distinguish your invention from those documents, and have them published, or to withdraw the application before it is published.

WIPO publishes the international application shortly after the expiration of 18 months from the priority date (if it has not been withdrawn earlier), together with the international search report. PCT international applications are published online on PATENTSCOPE, fully searchable database with flexible, multilingual interfaces and translation tools to assist users and the public in understanding the content of published applications.

International Preliminary Examination

International preliminary examination is a second evaluation of the potential patentability of the invention, using the same standards on which the written opinion of the ISA was based. If one wishes to make amendments to the international application in order to overcome documents identified in the international search report and conclusions made in the written opinion of the ISA, international preliminary examination provides the only possibility to actively participate in the examination process and potentially influence the findings of the examiner before entering the national phase. At the end of the procedure, an international preliminary report on patentability will be issued. The International Preliminary Examining Authorities (IPEAs) which carry out the international preliminary examination are the ISAs mentioned above. For a given PCT application, there may be one or more competent IPEAs.



The IPRP (Chapter II) consists of an opinion on the compliance with the international patentability criteria of each of the claims which have been searched. It provides you with an even stronger basis to evaluate your chances of obtaining patents, in most cases on an amended application, and, if the report is favourable, a stronger basis to continue with your application before the national and regional patent Offices. The decision on the granting of a patent remains the responsibility of each of the national or regional Offices in which you enter the national phase. The IPRP (Chapter II) should be considered by the Offices but is not binding on them.

The National Phase

It is only after the entity have decided whether, and in respect of which States, may proceed further with the international application that applicant must fulfil the requirements for entry into the national phase. These requirements include paying national fees and, in some cases, filing translations of the application. These steps must be taken, in relation to the majority of PCT Contracting States' patent Offices before the end of the 30th/31st month from the priority date. There may also be other requirements in connection with the entry into the national phase like the appointment of local agents. More general information on national phase entry can be found in the PCT Applicant's Guide, National Phase, and specific information concerning fees and national requirements can be found in the national chapters for each PCT Contracting State in the same Guide.

On entry into the national phase, the national or regional patent Offices concerned takes up the process of determining whether they will grant patent for the applicant in their country. Any examination which these Offices may undertake should be made easier by the PCT international search report and the written opinion and even more by an international preliminary examination report. The other national laws and procedures are followed for grant of patent as claimed.

Applications in Microbiological Inventions

The technological advancements in the field of microbiology, genetics, etc., have brought forward the various issues relating to patents in microorganisms. As per Section 3(j) of the Indian Patents Act, 1970, a plant, animal, seeds and biological processes, apart from microorganisms are not patentable. Therefore, a patent can only be granted for a micro-organism, when there is a human intervention to create a new, non-obvious and useful microorganism by way of genetic modification/engineering, cell fusion, gene therapy

or other micro-biological or non-biological techniques, accompanied by utility and industrial applicability. Since the disclosure of details in written description about the invention involving micro-organisms is not possible, the Budapest Treaty provides for a mechanism to deposit such microorganism with any of the designated "international Depository Authority" for the purpose of patent procedure of national patent office of all the contracting states.

Because of the difficulties and, on occasion, of virtual impossibility of reproducing a microorganism from a description of it in a patent specification, it is essential to deposit a strain in a culture collection centre for testing and examination by others. Therefore, in addition to the various formats required to be filed at the time of filing the patent application, in respect of patents relating to microorganisms, the applicant is also required to deposit the new strain of such microorganism disclosed in the patent specification, in a recognized depository. The depository assigns a registration number to the deposited microorganism, before filing for the patent application and this number needs to be quoted in the patent application. The Patents Act, 1970 as well as the Biological Diversity Act, 2002 stipulates that the source and geographical origin of the biological material should be clearly disclosed in the patent specification. Further, according to the provision of Section 6 of the Biological Diversity Act, if the biological material used in the invention is from India, permission from the National Biological Authority has to be obtained by the applicant, and the same should be submitted to the Patent Office before the grant of patent.

There are many international depositories in many countries, which are recognized under the Budapest Treaty. IMTECH, Chandigarh is a recognized depository in India. The more details regarding the said depository authority can be had on its website <http://imtech.res.in/>.

The international efforts for seeking extended IP rights around the world will be further deliberated in the coming part.

*Author can be reached at :
mgkodandaram@gmail.com*

With Best Compliments From:

Basappa M Venkatapur

IBBI- Registered Valuer – Securities or Financial Assets

Start-up valuation, Valuation for merger and acquisitions, Valuation under Ind AS, Valuation for ESOP, Valuation under Companies Act/FEMA...

www.thevaluers.in | contact@thevaluers.in | 9972305388

With Best Compliments From:

Basavaraja and Dileep Chartered Accountants

UPCOMING EVENTS



Karnataka State
Chartered Accountants Association®



KSCAA presents

KSCAA Shorts

Short duration webinar on

Changes in Income Tax returns for AY 23-24

Date 14th Apr 2023

Time: 5 pm to 5:45 pm



Speaker - CA Ashish Jain

KSCAA

CA. Pramod Srihari, President
CA. Vijaykumar M Patel, Secretary

For Enquiry Contact
+91 95337 15015

Direct Tax Committee

CA. Deepak Chopra, Chairman
CA. Nikhilesh Cacarla, Convener

For Online Registration Visit:
www.kscAA.com



KSCAA



ELOQUENT PROFESSIONALS'

JOIN US EVERY SATURDAY BETWEEN 5 PM - 7 PM

@ KSCAA OFFICE, NEAR RAJAJINAGAR
METRO STATION

LEARNINGS FROM MEETING:

- Organise your speech
- Groom yourself
- Enhance your Confidence
- Speech Evaluation by Mentors
- Experience Different Roles in Public Forum
- Network with Other CAs
- Much more!



FOR DETAILS CONTACT:

CA MOHAN KUMAR +91 98808 80011
CA SIDDARtha JAVALI + 91 99006 00119
CA AKSHAY HEGDE +91 90080 11553

PREPARE GSTR 9 & 9C IN ACCURATE WAY in less than 5 mins !!

- We extract data from GST Portal and Tally ERP/Prime.
- Prepare all the reports and working required for GST filing.
- Generate Discrepancy report.
- Ease in verifying RCM transactions.
- Assist in expense wise GST compiling for Table 14 of 9C.
- Assist in generation of HSN wise reporting in Table 17 of GSTR 9.
- Assist in computing short payments in taxes and liability to discharge thru DRC 03 if any.
- Assist in Computing ITC short availed / excess availed.



SCAN HERE & BOOK A DEMO



REVOLUTIONIZE YOUR AUDIT PROCESS

+91 80888 03561 | www.tallyonwheels.com | support@tallyonwheels.com



Dr. K.P. Gopalkrishna

The International School Bangalore TISB - A World IB School, Bengaluru



WORLD
CLASS
SCHOOL

Pioneer IB world school in Asia

Since 2000

Teachers & Students from over 40 nations

140-acre lush green campus

Pollution free oxygen enrich green campus

5 lakh sq. ft. infrastructure with roofed Amphitheatre

Most modern sports and games fields, swimming pool, mini golf field

Cricket, Soccer, Hockey, Tennis, Basketball & Volleyball

Located in the silicon valley of Asia, just 1.30 hours driving distance from Bangalore Kempegowda International Airport

BE THE START OF SOMETHING

Connect With:

@TISBangalore

TISB offers:

IB Diploma (International Baccalaureate Organisation)
IGCSE (University of Cambridge)
CIPP (Cambridge International Primary Programme)

- A boarding school with provision of Day and Week Boarding
- 300 boarding students, 40 different nationalities
- 45 co-curricular activities
- Pastoral Care for 1000+ students
- Separate international boys home and girls home
- Consistency in academic excellence
- Stimulating wide spectrum of students' talents
- Healthcare centre with professional doctors and senior nursing executives
- Nurturing NextGen leaders
- SAT Centre

An IB World School of 2 decades with well established track record of placements to top Universities around the world, including Harvard, Oxford, Cambridge, MIT, LSE, Wharton, Stanford, King's College, Imperial College, SMU, NUS-Singapore, Japan, Germany, University of Hong Kong, and many more.

ADMISSIONS (Junior school to IB World School) 2023-24 / 2024-25

Registrations for day boarders and weekly boarders are now open for the academic year 2023-24.
Registrations for the academic year 2024-25 are also accepted. Application form and prospectus are available at www.tisb.org

Contact Registrar - Admissions
+91 80 6723 5900 (Extn: 4) or
email: admission@tisb.ac.in



TISB

The International School Bangalore
NAFL Valley, Whitefield-Sarjapur Road, Near Dommasandra Circle,
Bengaluru - 562 125, India. Phone: **+91 80 6723 5900**
www.tisb.org



Dr. Bindu Hari
M.Sc (Chem), B.Ed., Ph.D
Sr. Principal & Director



ADVT