



**KSCAA**<sup>®</sup>  
Karnataka State Chartered Accountants Association (R)

**NEWS BULLETIN**

November 2023 - Vol. 11, Issue 03 - ₹ 25/-  
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# GST

ON

## GUARANTEES AND WARRANTIES



## From the President

Dear Readers,



**D**eepavali is here, and we're all filled with excitement for the celebrations, having successfully met the income tax filing deadlines. Throughout India, Deepavali is celebrated in diverse ways, called Laxmi Pooja in North India, but in our state, Karnataka in two days as Naraka Chaturdashi and Bali Padyami.

In essence, every festival is a means to reinforce and nurture various forms of relationships while expressing gratitude to God for the gift of a wonderful life.

Coming to the theme of the year, "Re-craft yourself". The theme is set to be achieved through 5D processes. In the last two months, our focus was on Discovering oneself. The next process is to Deliberate. In essence, every attempt would be made to involve in the process of prioritising the opportunities.

To achieve the desired results our actions should be aligned with our aspirations. We cannot desire east and go west. Unless we are tough on ourselves life will not be easy for us. If you want to be the pathfinder you have to be the pathbreaker. Unless we prioritize our mission over personal preferences, it is not possible to fulfill larger purpose goals.

To be a Numero Uno, you got to be the best in what you do. Learn more than what others know. Do more than what others do. Expect more from yourself than what others expect of you. If you want Krishna beside you, then you have to qualify yourself as the best warrior.

1. Let us grasp the recent events that are pertinent to our profession

### 1.1 Exposure Draft on Accounting Standard on LLP:

The Accounting Standards Board of ICAI invites comments on the Exposure Draft with the last date for submission of being November 27, 2023. Members are urged to share their comments as per details furnished in ICAI website.

### 1.2 GIFT City:

There is a likely enhanced opportunity for Indian and Global Chartered Accountancy firms to set up offices at the Gujarat International Finance Tech city. The Government may relax norms relating to serving non-financial clients from the firms set up at the International Financial Services Centre at GIFT City.

### 1.3 Mera Yuva Bhat

Mera Yuva Bharat (MY Bharat), is a phydigital platform, launched on 31st October 2023, as an autonomous body that will benefit the youth in the age group of 15-29 years. The primary objective of this platform is to develop young leaders and facilitates youth to connect with government initiatives and other activities of other stakeholders that engage youth.

2. Let us have a look at some of the events that have taken place during the last month.

### 2.1 Events at KSCAA:

At KSCAA, its activities of spreading knowledge continue persistently with webinar and seminars being conducted by various committees. The varied areas of professional interest were covered during the previous month with (i) Recent Supreme Court Judgments -Direct Taxes (ii) Steering through the recent trends on Transfer Pricing (iii) Court room series –u/s 16(4) of GST (iv) Equity Linked funding instrument & special terms in funding agreements (v) Succession planning

### 2.2 Kannada Rajyotsava

Kannada Rajyotsava is an occasion to celebrate the unity and diversity of Karnataka, paying tribute to its language and culture. It's a significant day for the people of Karnataka, and the entire state comes alive with vibrant celebrations and cultural expressions. During the Eloquent Professionals 145<sup>th</sup> Meeting, we celebrated Kannada Rajyotsava day as a mark of respect and to understand the linguistic diversity of Karnataka. The entire two-hour leadership and communication development platform was exclusively dedicated to Kannada language, including prepared speeches, impromptu sessions, and a guest address by a Past President. The participants were encouraged to speak in Kannada language. The forum's captain also announced that for the entire month of November, the forum would operate in a bilingual style

### 2.3 Trip to Galibore Nature Camp

The Leadership & Skill Development Committee effectively coordinated a nature walk and trekking excursion to Galibore, completed with coracle rides and bird-watching.

### 2.4 Mentor's Meet:

From the words of Mahatria,

*Basically, we have to shine the light of awareness on the blind spots repeatedly, not just once or twice. Awareness has to penetrate deeply.*

Anything the mind covers from our view is a blind spot. The first step in overcoming blind spots is to accept that there is such a thing as a blind spot. Once this is accepted, next is to observe it in others, since we cannot observe it in ourselves. We then have to assume we have a similar blind spot, though it may not feel so. Maybe it is not there, but we need to eliminate that possibility. Having a mentor, guide, guru or life coach is very useful in recognizing our blind spots and dealing with them.

The mentorship meeting for the term took place on 4th November, with the aim of soliciting advice and counsel from former presidents, senior members, well-wishers, and distinguished professionals in our field. The suggestions from mentors were carefully documented and will be implemented at the right time with diligence.

### 2.5 Interactive meeting with Bengaluru members of BCAS:

We organized an interactive meeting at Palace Club on 4<sup>th</sup> November, with Bangalore members of the Bombay Chartered Accountant Society. During the event, former presidents of BCAS encouraged the members to participate in the upcoming Mega Conference scheduled for January 2024, celebrating the society's 75<sup>th</sup> anniversary

In response to members' requests, the GST RRC originally planned for November has been rescheduled to a later date.

Please stay connected through our Website and WhatsApp to actively participate in every event of KSCAA.

Before, I sign off, let me wish everyone a Happy and Prosperous Deepavali!!!

Happy Reading!

Yours' Faithfully,  
**CA. Sujatha G**  
**President**



# KSCAA<sup>®</sup>

## NEWS BULLETIN

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### 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.

Email: [journal@kscaa.com](mailto:journal@kscaa.com) | Website: [www.kscaa.com](http://www.kscaa.com)

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### Disclaimer

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# INCOME TAX UPDATES

## A. ITAT Judgements

1. Delhi ITAT holds that the deposit of employees' contribution to PF/ESIC should be qua due date prescribed under relevant legislations and regulations following the decision of the Calcutta High Court in *Kanoi Papers & Industries Ltd. v. CIT 75 TTJ 448 (Cal)*, which stated that the due date should be calculated from the end of the month in which salary was disbursed. [*Sai Computers Ltd., [2023] 155 taxmann.com 607 (Delhi - Trib.)*]
2. Surat ITAT holds that the requirement of making a claim in return of income under section 80A(5) is directory in nature and since nature of deduction and quantum was not disputed by Assessing Officer, deduction under section 80P(2)(a)(i) and 80P(2)(d) was to be allowed. [*Wanka Vividh Karyakari Seva Sahkari Mandali Ltd., [2023] 156 taxmann.com 68 (Surat-Trib.)*]
3. Delhi ITAT holds that where AO found that assessee had made bogus purchase from two parties, since confirmations of both parties were placed on record and purchases have been entered in stock register and corresponding sales had not been disputed by revenue authorities and payments for such purchases had been carried out through banking channel, AO was not justified in treating said purchase as bogus and making addition. [*Gudwala & Sons, [2023] 155 taxmann.com 532 (Delhi - Trib.)*]
4. Surat ITAT holds that mere filing incorrect claim which was not allowed by Assessing Officer, that by itself would not attract penalty under section 271(1)(c). [*Purshottam Farmers Co. Op Cotton Ginning & Pressing Society Ltd., [2023] 155 taxmann.com 191 (Surat-Trib.)*]

## B. High Court Judgements

1. Gujarat High Court holds that where assessee could not upload Form No.10-IC on ITBA portal due to technical error, it could not be deprived of benefit particularly when this being first year for availing such benefits. [*KGY Glass Industries (P.) Ltd., [2023] 156 taxmann.com 18 (Gujarat)*]
2. Delhi High Court holds that dues payable to creditors, including statutory creditors, for periods which precede date when Resolution Plan is approved, can only be paid as per terms contained in the plan, hence, demand recovery notices and consequent orders issued to assessee for period preceding date of the Resolution Plan were unsustainable in law and unenforceable. [*Tata Steel Ltd., [2023] 156 taxmann.com 104 (Delhi)*]
3. Bombay High Court holds that expenditure incurred towards entrance fees and annual membership would be a revenue expenditure because it has been incurred wholly and exclusively for the purposes of business and not towards capital account as such expenditure only facilitates the smooth and efficient running of the business enterprise and does not add to the profit earning apparatus of the business enterprise. [*Swiss Re Services India (P.) Ltd., [2023] 156 taxmann.com 56 (Bombay)*]
4. Bombay High Court holds that powers of Commissioner are not limited to correct error committed by subordinate authorities but could even be exercised where errors are committed by assessee which are raised for first time in an application under section 264. [*Pramod R. Agrawal, [2023] 156 taxmann.com 126 (Bombay)*]
5. Calcutta High Court holds that where AO decided issue which was not part of limited scrutiny for which assessment was directed to be scrutinised, since AO did not abide by Instruction No. 5/2016, dated 14-07-2016, AO exceeded his jurisdiction and assessment order was bad in law. [*Weilburger Coatings (India) (P.) Ltd., [2023] 155 taxmann.com 580 (Calcutta)*]
6. Calcutta High Court holds that where assessee-company, engaged in iron ore mining, incurred periphery development expenses for territorial welfare as well as welfare of local people in area in which mines were operating as per direction of local administration, impugned CSR expenditure incurred by assessee prior to assessment year 2015-16 were allowable as business expenditure as same were wholly and exclusively incurred for purpose of business. [*Ramesh Prasad Sao, [2023] 155 taxmann.com 256 (Calcutta)*]



### C. Supreme Court Judgements

1. Supreme Court holds that the application of proviso to section 153C(1) would not be confined to question of abatement, but also with regard to date from which six year period was to be reckoned in respect of which returns were to be filed by third party, thus, period for which other persons i.e assesseees were required to file returns, would commence only from date when materials were forwarded to their jurisdictional Assessing Officers. [*Jasjit Singh, [2023] 155 taxmann.com 155 (SC)*]
2. Supreme Court holds that education cess cannot be allowed as deduction in computing income chargeable under head 'profits and gains of business or profession'. [*Sesa Goa Ltd., [2023] 155 taxmann.com 342 (SC)*]
3. Supreme Court holds that deduction u/s 80P can't be denied u/s 80P(4) unless co-op. society is a co-op. bank within the meaning of sections 5(b) and 56 of Banking Regulation Act, 1949. [*Kerala State Co-Operative Agricultural & Rural Development Bank Ltd., [2023] 154 taxmann.com 305 (SC)*]
4. Supreme Court holds that a notification under 90(1) is necessary and a mandatory condition for a Court, Tribunal or an authority to give effect to a DTAA, or any protocol changing its terms that has the effect of altering the existing provisions of law. [*Nestle SA & Others, TS-616-SC-2023*]

5. Supreme Court holds that interest earned from banks whether or not the banks are corporate members of the Club, would be taxable as the principle of mutuality would not apply by reiterating the ratio of the judgment in Bangalore Club. It also the ratio in Cawnpore Club on the issue of taxability of interest does not have any precedential value. [*Secunderabad Club, TS-457-SC-2023*]

### D. CBDT Updates

1. CBDT amends Part-B-TI of ITR-7 amended vide Notification No. GSR 813(E) dated 31.10.2023.
2. CBDT condones delay in filing Form No. 10-IC for AY 2021-22 (subject to certain conditions) vide Circular No. 19/2023 dated 23.10.2023.
3. CBDT extends due date of filing of report under clause (8) of section 10AA and clause (5) of section 10A to 31.12.2023 vide Circular No. 18/2023 dated 20.10.2023.
4. CBDT issues guidelines on assessment of startups involving section 56(2)(viib) issued vide Circular F. No. 173/149/2019-ITA-1 dated 10.10.2023.
5. CBDT clarifies on reporting of substantial contributors in Form No. 10B/Form No. 10BB vide Circular No. 17/2023 dated 9-10-2023.



**Velocity Controls**

Velocity controls help in monitoring and tracking repeated card-not-present transactions to prevent fraud. It triggers an alert when many transactions happen through a single card. The issuer can verify the transaction authenticity via email or call with the cardholder"

# SET OFF OF LONG TERM CAPITAL LOSS AGAINST SHORT TERM CAPITAL GAIN - PERMISSIBLE?



CA. Suman Lunkar

Section 74 of the Income tax Act deals with losses under the head “capital gains”. Section 74(1)(b) of the Act deals with set off of Long term Capital Loss . The provision of section 74(1)(b) of the Act reads as under:

*“In so far as such loss relates to a long term capital asset, it shall be set off against income, if any, under the head ‘Capital Gain’ assessable for that assessment year in respect of any other capital asset not being a short term capital asset.”*

The general understanding of this provision would be Long term Capital loss can be set off against long term Capital gain only and not against short term capital gain. However, this proposition of law may not be 100% right.

Section 45 is a charging section of capital gain and the manner of computation of gains/losses on transfer of capital assets are prescribed in sections 48 and 49 of the Income Tax Act. However, section 50 carves out an exception by way of a legal fiction with respect to depreciable assets and provides that where depreciation has been claimed and allowed on the asset, then, the gain/loss arising on transfer of such asset shall be deemed to be the gain/loss arising from the transfer of short term capital assets only. (In short, Short term capital gain or loss only.) irrespective of the holding period of such depreciable asset. The provisions of section 50 of the Act are reproduced herein below:

*"50. Special provision for computation of capital gains in case of depreciable assets. -Notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income Tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49 shall be subject to the following modifications :*

(1) where the full value of the consideration received or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of the assets during the previous year, exceeds the

aggregate of the following amounts, namely :

- (i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;
  - (ii) the written down value of the block of assets at the beginning of the previous year; and
  - (iii) the actual cost of any asset falling within the block of assets acquired during the previous year, such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;(emphasis supplied)
- (2) where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down, value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be **deemed to be the capital gains arising from the transfer of short-term capital assets."**(emphasis supplied)

From the conjoint and cursory glance of section 74(1)(b) r.w.s 50 of the Income tax Act, one would come to the conclusion that loss arising from transfer of long term capital asset cannot be set off against gain arising from transfer of depreciable asset as the gain on sale of such asset would always be short term capital gain by virtue of deeming fiction embedded in section 50 of the Act and as per the provisions of section 74(1)(b) of the Act, Long term capital loss can be set off only against long term capital gain.

However, a meticulous analysis of the provisions of section 50 of the Act, would show that the legal fiction created by the statute is to deem the gain/loss arising from transfer of depreciable asset as short term capital gain/loss as the case may be and not to deem the depreciable asset as short term capital asset. Therefore, it cannot be said that section 50 of the Income tax Act,

converts the depreciable asset (held for long term) into a short term capital asset.

In this regard, one could draw inference from the decision of honourable Bombay High court in the case of CIT vs Ace Builders Pvt Ltd 144 Taxmann 855 wherein the question of law was with respect to allowability of deduction u/s 54E of the Act against the gain arising from transfer of depreciable asset. Allowing the claim of deduction u/s 54E of the Act, the honourable Bombay High court held as under:

*“26. It is true that section 50 is enacted with the object of denying multiple benefits to the owners of depreciable assets. However, that restriction is limited to the computation of capital gains and not to the exemption provisions. In other words, where the long-term capital asset has availed depreciation, then the capital gain has to be computed in the manner prescribed under section 50 and the capital gains tax will be charged as if such capital gain has arisen out of a short-term capital asset but if such capital gain is invested in the manner prescribed in section 54E, then the capital gain shall not be charged under section 45 of the Income Tax Act. To put it simply, the benefit of section 54E will be available to the assessee irrespective of the fact that the computation of capital gains is done either under sections 48 and 49 or under section 50. The contention of the revenue that by amendment to section 50, the long-term capital asset has been converted into a short-term capital asset is also without any merit. As stated hereinabove, the legal fiction created by the statute is to deem the capital gain as short-term capital gain and not to deem the asset as short-term capital asset. Therefore, it cannot be said that section 50 converts long-term capital asset into a short-term capital asset.*

From the above it is clear that section 50 makes it explicitly clear that the deemed fiction created in sub-sections (1) and (2) of section 50 is restricted only to the mode of computation of capital gains contained in sections 48 and 49 of the Act and cannot be extended beyond that. Further, it is well established in law that a fiction created by the legislature has to be confined to the purpose for which it is created. In this connection, one may refer to the decision of the Apex Court in the case of State Bank of India V. D. Hanumantha Rao 1998 (6) SCC 183. In that case, the service rules framed by the bank provided for granting extension of service to those appointed prior to 19-7-1969. The respondent therein, who had joined the bank on 1-7-1972 claimed extension

of service because he was deemed to be appointed in the bank with effect from 26-10-1965 for the purpose of seniority, pay and pension on account of his past service in the army as short service commissioned officer. In that context, the Apex Court has held that the legal fiction created for the limited purpose of seniority, pay and pension cannot be extended for other purposes.

Drawing the same analogy, whether one could argue that loss arising from transfer of a Long term Capital asset could be set off against gain arising from transfer of depreciable assets.

Similar question of law was raised before the honourable Bombay High court in the case of **CIT vs Manali Investment [2013] 39 taxmann.com 4** wherein it was held as under:

*“3. On further appeal, the Tribunal by the impugned order has allowed the claim of the respondent - assessee to set-off its long term losses in terms of Section 74 of the Act against the long term capital gains on sale of transformers and meters. This was by following the decision of this Court in the matter of CIT v. Ace Builders (P.) Ltd [2006] 281 ITR 210/[2005] 144 Taxman 855 (Bom). In the case of Ace Builders (P) Ltd (supra), this Court held that by virtue of Section 50 of the Act only the capital gains is to be computed in terms thereof and be deemed to be short-term capital gains. However, this deeming fiction is restricted only for the purposes of Section 50 of the Act and the benefit under Section 54E of the Act which is available only to long term capital gains was extended. In this case, the Tribunal held that the position is similar and the benefit of set-off against long term capital loss under Section 74 of the Act is to be allowed.*

Similar proposition of law has been upheld in the following cases:

**CIT vs Smart Sensors and transducers Ltd 104 taxmann.com 129(mum)**

**CIT v. Hathway Investments (P.) Ltd, ITA (L) No.405 of 2012**

In view of the above judicial pronouncements, the set off of long term capital loss against the gain arising out of transfer of depreciable asset is permissible. However, this proposition of law is not settled principle but open for interpretation.

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CA. Sowmya C A

# INDIRECT TAX UPDATES

In recent times, the GST Authorities have sent several notices for the fiscal year 2017-18 where the limitation period for the issuance of these notices was due to end. The taxpayers are to respond to these notices within 30 days and these notices predominantly relate to routine matters like mismatch in GST outward liability between GSTR-1 and GSTR-3B, difference in input tax credit between GSTR-2A and GSTR-3B etc. and adjudication for the same needs to be concluded latest by 31st December. It is anticipated that there will be a surge in litigation associated with these notices in the coming months.

While the online gaming sector is already under the scrutiny of the GST authorities, a spate of GST demand notices has been served on various other industries including shipping, insurance, automobile sector who have been recipients of GST notices in recent months. The month also witnessed the 52nd GST council meeting held on 07 Oct 2023 and the council has recommended many trade facilitation measures and addressed some ongoing issues and pursuant to this, circulars/notifications are in the process of being issued. The compilation of notifications, circulars, and advisories issued during this month has been summarized for an interesting read.

## Recent amendments in Rate Notifications (applicable with effect from 20 Oct 2023 :

- ◆ **Amendment in Rate Notification for the supply of services**
  - a. Insertion of a condition restricting availment of ITC on input service of a Passenger Transport Service/ Rental Services of transport vehicles with operators to 2.5%, where central tax charged by the supplier is higher than 2.5%.
  - b. With respect to services provided by a race club, the word 'totalisator or a license to a bookmaker' has been replaced with 'licensing a bookmaker'.
  - c. Entries related to 'Gambling and betting services including similar online services' and 'Lottery services' in the scheme of classification of services have also been omitted.

(Notfn No. 12/2023-CT(R) and 15/2023-IT(R) dt. 19.10.2023)

- ◆ **Amendment in notification on services exempt from levy of GST:**

Services provided to a Governmental Authority by way of water supply, public health, sanitation and conservancy, solid waste management and slum improvement and upgradation have been exempted from the levy of GST.

(Notfn No. 13/2023-CT(R) and 16/2023-IT(R) dt. 19.10.2023)

- ◆ **Amendment in notification on Services leviable to reverse charge under GST:**

Supply of all goods and services by Indian Railways shall be taxed under the Forward Charge Mechanism to enable them to avail of ITC.

(Notfn No. 14/2023-CT(R) and 17/2023-IT(R) dt. 19.10.2023)

- ◆ **Amendment in notification relating to Inverted duty structure - Restriction on refund due to inverted duty structure not to apply for construction of civil structure or part thereof.**

(Notfn No. 15/2023-CT(R) and 18/2023-IT(R) dt. 19.10.2023)

- ◆ **Amendment in notification on services on which tax shall be paid by E-Commerce Operator (ECO):**

to provide that GST in case of services by way of transportation of passengers provided through Omnibus shall be paid by the ECO except where the supplier supplying such service through the ECO is a Company.

(Notfn No. 16/2023-CT(R) and 19/2023-IT(R) dt. 19.10.2023)

- ◆ **Rationalisation in the rate notification for goods:**

- a. The GST rate on molasses has been reduced from 14% to 2.5%.
- b. Food preparation containing at least 70% millet pre-packaged and labelled is taxable at 5%
- c. Spirits for industrial use have been made taxable at the rate of 9%.

(Notfn No. 17/2023-CT(R) and 20/2023-IT(R) dt. 19.10.2023)



- ◆ **Absolute exemption on supplies of food preparation of millet flour in powder form containing at least 70% millet by weight, other than pre-packaged and labelled:**

(Notfn No. 18/2023-CT(R) and 21/2023-IT(R) dt. 19.10.2023)

- ◆ **Amendment in RCM notification on specified supply of goods to exclude Ministry of Railways on sale of used vehicles, waste and scrap to a registered person which will henceforth be paid under forward charge.**

(Notfn No. 19/2023-CT(R) and 22/2023-IT(R) dt. 19.10.2023)

- ◆ **Amendment in notification relating to Inverted duty structure - ‘No refund of unutilised input tax credit u/s 54(3) in case of supply of certain goods’- Imitation zari thread or yarn made of metallised polyester film or plastic film due to inverted duty structure.**

(Notfn No. 20/2023-CT(R) and 23/2023-IT(R) dt. 19.10.2023)

- ◆ **Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 - Notified**

[F. No A-50050/69/2023-CESTAT-DOR Dt. 25 Oct 2023]

- ◆ **Notification of the Central Goods and Services Tax (Fourth Amendment) Rules, 2023**

- Amendment in Rule 28 to include sub-rule 2 - Value of supply of corporate guarantee between distinct or related persons, other than through an agent shall be deemed to be-**

- one per cent of the amount of such guarantee offered, or
- the actual consideration, whichever is higher

- Amendment in Rule 142(3) – Rule amended to term the issue of DRC-05 by the proper officer as “intimation” and not “an order” to communicate conclusion of proceedings on voluntary payment by taxpayer.**

- Amendment in Rule 159 –Provisional Attachment of Property to cease automatically upon expiry of a period of 1 year from the date of issuance of such order and amendment to Form GST DRC-22.**

- Amendment in Form REG-01, Form REG-08, Form GSTR8, Form PCT-01**

(Notfn No. 52/2023–CT dated 26 Oct 2023)

## Recent Circulars:

- ◆ Settlement of export proceeds received in Indian Rupees (INR) from correspondent banks' Special Rupee Vostro Accounts of partner trading countries satisfies the requirement of receipt of convertible foreign exchange for services exports, subject to Foreign Trade Policy and RBI circulars.

(Circular No. 202/14/2023-GST dt. 27.10.2023)

- ◆ **Clarification regarding the determination of place of supply in various cases**

First, for the transportation of goods where location of supplier or recipient is outside India, the omission of Section 13(9) from 01 Oct 2023, has led to changes. The place of supply for goods transportation, excluding mail and courier services, shall now adhere to the default rule under Section 13(2) of the IGST Act. However, for mail and courier services, Section 13(2) continues to dictate the place of supply.

In the advertising sector, the place of supply depends on whether sale of space or advertising services are provided. Where there is sale of space on hoarding/structure, location is determined by the location of such structure (Section 12(3)(a)), while advertising services alone follow the location of the recipient (Section 12(2)).

As for co-location services, the place of supply depends on the nature of the service agreed upon. If it involves renting physical space exclusively, Section 12(3)(a) dictates the place based on the immovable property's location. However, if it encompasses activities ensuring server operations, the default provision under Section 12(2) applies, considering the recipient's location.

(Circular No. 203/15/2023-GST dt. 27.10.2023)

- ◆ **Clarification on issues about the taxability of personal guarantee and corporate guarantee in GST:**

- The provision of a personal guarantee by a director to the bank/financial institutions for a credit facility to be sanctioned to the Company is a taxable service under Schedule I of the CGST Act. However, since no consideration is receivable as per RBI Circular No. RBI/2021-22/121, the taxable value is zero when no consideration is paid. If personal guarantees are given by others for consideration, the taxable value includes remuneration/consideration paid directly/indirectly.

- o Corporate guarantee provided to subsidiary or related entities is treated as a supply (even if without consideration) due to related person status, where valuation for tax would be as per the new Rule 28(2) of CGST Rules.

(Circular No.204/16/2023-GST dt. 27.10.2023)

- ◆ **Clarification regarding GST rate on imitation zari thread or yarn:**

It has been clarified that imitation zari thread or yarn made from metallised polyester film/ plastic film will be classified under HSN 5605 and will attract a tax rate of 5% GST. Further, no refund will be permitted on polyester film (metallised)/plastic film on account of the inverted rate structure.

(Circular No. 205/17/2023-GST dt. 31.10.2023)

- ◆ **Clarifications regarding the applicability of GST on certain services**

- a. Clarification has been issued in line with the explanation provided in Notfn. No. 11/2017-CTR to provide that leasing of vehicles without an operator are not within the same line of business as passenger transport services/renting of vehicle with the operator.

- b. Clarification concerning reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants to provide that electricity charges bundled with property rent or maintenance constitute a composite supply and are taxed accordingly. When collected on an "actual basis" as a pure agent, it's excluded from the value of supply. Further, If they charge occupants based on actuals as levied by the State Electricity Board, they are deemed to be acting as pure agent for this supply.

- c. Rate Clarification concerning job work for processing of "Barley" into "Malted Barley". It is clarified that though the end use of malted barley can be an ingredient of food products or alcoholic beverages and irrespective of its end-use, the job work of processing barley will be taxed at 5% GST rate as food and food products.

- d. District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

- e. It has been clarified that supply of pure services and composite supplies (where the value of goods constitutes not more than 25% of the total value of supply) by way of horticulture/horticulture works made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CT(R) dated 28.06.2017.

(Circular No.206/18/2023-GST dt. 31.10.2023)

#### DGFT Notifications:

- ◆ **Additional clarifications on the import of laptops, tablets, all-in-one personal computers, ultra-small computers and servers effective from 1 November 2023:**

The DGFT has further mandated that IT hardware manufactured in Special Economic Zones (SEZ) may be imported into Domestic Tariff Area (DTA) without an Import Authorization, subject to payment of applicable duties (if any). However, it is worthwhile to note that activities such as re-packing, labelling, refurbishing, testing, and calibration alone within the SEZ would not be considered "manufacturing" to avail of this exemption from Import Authorisation. Further, the exemption is extended to repair, return and replacement of items previously sold.

(Notification No. 38/2023 dated 19 Oct 2023)

- ◆ **Automatic System based issue of Status Holder Certificate (e-SHC) with no requirement of filing any application by the Exporters**

In furtherance of the e-governance initiative of DGFT and in the interest of trade facilitation, the IT module has been equipped to recognize and grant system-generated electronic Status Holder Certification based on merchandise export data available with DCGI&S database without the need for filing any application by the exporter. The individual exporters will be issued Status categories based on merchandise export figures from EDI, non-EDI Ports and SEZ ports. However, for those exports which are not captured by the DCGI&S systems, a manual application will have to be placed on the portal.

(Public Notice No. 32/2023 dated 09 Oct 2023)

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# WARRANTIES - IMPLICATIONS UNDER GST



CA. Annapurna Kabra

**W**arranty is a type of guarantee that a manufacturer makes regarding the condition of its goods. It refers to terms and situations in which repairs or exchanges will be made in the event, the goods do not function as originally described or intended. We have experienced that the warranty is given by the suppliers in most of the goods especially in case of Automobiles and FMCG goods. Even under the Erstwhile law or in GST law, the department has been raising the allegations with reference to the taxability of free of cost replacements and reversal of Input tax credit in the hands of the manufacturer.

Against that the taxpayers are contending that services replacement of defective parts is provided to the customer free of cost and where free replacement is provided to the customers without consideration under warranty, no GST should be chargeable on such replacement. The issue has been represented due to contrary interpretations and to avoid unnecessary litigations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers vide C.B.I. & C. Circular No. 195/07/2023-GST, dated 17-7-2023 as follows:

## Issue 1

*There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/repair services. Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?*

## Clarification

- ♦ The value of original supply of goods (provided along with warranty) by the manufacturer to the

customer includes the likely cost of replacement of parts and/or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

- ♦ As such, where the manufacturer provides replacement of parts and/or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/repair services, no further GST is chargeable on such replacement of parts and/or repair service during warranty period.
- ♦ However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

## Analysis:

- ♦ The price originally charged to the customers include the warranty charges and accordingly there is no levy of GST as there is no consideration at the time of replacement/repair services. If the consideration is separately charged for the above services then GST will be payable.

## Issue 2:

*Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?*

## Clarification

- ♦ In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as

exempt supply and accordingly, the manufacturer, who provides replacement of parts and/or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.

**Analysis:**

The manufacturer, who provides replacement of parts and/or repair services to the customer during the warranty period, is **not required to reverse the input tax credit under GST law**

**Issue 3:**

*Whether GST would be payable on replacement of parts and/or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?*

**Clarification**

- ◆ There may be instances where a distributor of a company provides replacement of parts and/or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/or repair services from the customer.
- ◆ In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/or repair services to the customer.
- ◆ However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

**Analysis:**

Even the distributor is not required to pay GST on the activity of providing replacement of parts and/or repair services to the customers. If the additional consideration is charged by the distributor then they are liable for GST.

**Issue 4**

*In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any*

*supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?*

**Clarification**

(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.

(b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.

In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.

(c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.

### Analysis:

- a. If the distributor charges from the manufacturer for replacing the parts or repair to the customers, then in such instance GST is payable by the distributor and manufacturer can avail the input tax credit.
- b. If the distributor raises the requisition from the manufacturer and if manufacturer supplies to distributor during the warranty period then in such instance there is no levy of GST and also there is no requirement to reverse the input tax credit by the manufacturer.
- c. If the distributor replaces the parts to customer out of stock received from manufacturer, then in such instance if the manufacturer raises the credit note to distributor within the notified time, then the tax liability can be adjusted by manufacturer and accordingly the distributor can reverse the input tax credit to the extent of parts replaced. Even under the erstwhile law in case of Tata Motors Case Ltd. Vs the Deputy Commissioner of Commercial Taxes (SPL) & ANR Civil Appeal No 3733 of 2023 held that credit note issued by a manufacturer to the dealer, is a valuable consideration within the meaning of the definition of sale and hence liable to sales tax under the respective states.

### Issue 5

Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?

### Clarification

In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017. Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.

### Analysis:

If the distributor renders the repair services to the customers during warranty period and charges from the manufacturer then in such scenario the distributor is liable for GST and manufacturer can avail the input tax credit under the GST law.

### Issue 6

*Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?*

- a) If a customer enters into an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.
- (b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

### Analysis:

- a. The GST would be payable on extended warranty even if the agreement is entered at the time of original supply. It becomes part of value of composite supply.
- b. Even if customer enters into an agreement even after original supply then in such instance also the GST would be payable either by manufacturer, distributor or any other third party to the contract.

The above clarifications are following the position under the erstwhile indirect tax laws and decisions of various courts. The above circular has to be tested based on various business models and terms of agreements between the manufacturer, distributors



and customers under the GST law.

### Clarifications on Karasamadhana Scheme

1. With reference to Article on Karasamadhana scheme 2023 in October KSCAA Journal, there was typo error in First para. It should be “December 2023” in lieu of “October 2023”.

#### 2. Extension of Due date on Karasamadhana Scheme 2023

The due dates of completion of assessment, reassessment, rectification, Suo moto revision proceedings or withdrawal of appeal and other proceedings to avail the benefit of the Scheme is extended by one month viz to be concluded by 30-11-2023 (Go No. FD 07 CSL 2023 dated 31-10-2023). The Applications for the Karasamadhana scheme can be made by 31<sup>st</sup> January 2024. Any discrepancy raised by the officer should be resolved and differential payment if any should be made before 15<sup>th</sup> February 2024 based on Extended Notification,

#### 3. Clarification on Professional tax – Karasamadhana scheme

Clarification with regard to the Karasamadhana Scheme for Professional tax post 1-7-2017. It is clarified by notification (KSA CR 17/2022-23) dated 30-10-2023 that the scheme is applicable for all Professional Tax Proceedings even subsequent to July 2017.

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# GST ON PERSONAL & CORPORATE GUARANTEES



CA. Mahadev R  
CA. Akshay M Hiregange

The 52nd GST Council has recommended issuing a Circular to provide clarity regarding personal guarantee given by a director and Corporate Guarantee including GST taxability on the same. This has been a long pending issue. Notification no. 52/2023 – Central Tax dated 26th October 2023 and Circular No. 204/16/2023-GST dt. 27th October 2023 has been issued to give effect to the recommendations of the GST council. It is relevant to note the very recent Hon'ble Supreme Court's decision on Edelweiss Financial Services Ltd under the Service Tax regime which went in the favour of the assessee. However, the major difference between this case of service tax compared to GST is the non-levy of service tax in the absence of consideration.

## Difference between Personal, Bank and corporate guarantee

Section 126 of the Indian Contract Act 1872 defines 'Guarantee' as a contract to perform the promise, or discharge the liability, of a third person in case of his default.

As per Section 127 of the Indian Contract Act 1872, anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

One must understand and ensure the facts of the case are clearly understood and the contract between the parties is not a contract of indemnity as defined in Section 124 of the Indian Contract Act 1872 which states that when one party promises to compensate another against the losses incurred by them due to anything done or omitted to be done by the promisor, a contract of indemnity is said to be made between the parties.

Note: Contract of Indemnity has only 2 parties - an Indemnifier and an Indemnified.

A tabular depiction will help understand the various types of guarantees:

Details	Personal Guarantee	Bank Guarantee	Corporate Guarantee
Surety	Director	Bank	Parent Co.
Principal Debtor	Company	Bank's Customer	Subsidiary Co.
Creditor	3 <sup>rd</sup> party/Bank	3 <sup>rd</sup> party	3 <sup>rd</sup> party/Bank
Underlying Asset	Not necessary	Yes	Not necessary
Fee charged	The director cannot charge as per Master Circular – RBI/2012-13/69 Others – Yes/No	Yes	Not necessary

## Few relevant decisions

Corporate guarantee is not liable to tax when consideration is not prescribed – *Edelweiss Financial Services Ltd (ST Regime – Supreme Court - Civil Appeal Diary No. 5258/2023)* & *Sterlite Industries India Ltd (Chennai CESTAT)*.

Corporate guarantee is liable to tax when consideration is prescribed – *Olam Agro India (Delhi CESTAT)*

Personal guarantee (director) is liable to RCM under GST- Writ petition dismissed in the case of *BST Steels Pvt Ltd (Telangana High Court Writ Petition No. 21384 of 2023)*.

## Changes recommended in the 52nd GST Council meeting:

1. Circular 204/16/2023 dt. 27th October 2023 clarifying that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing a personal guarantee to the bank/financial institutes on their behalf, the open market value of the said transaction may be treated as NIL and hence, no tax is payable.

- Notified vide NN 52/2023-CT dated 26th October 2023 - To insert sub-rule (2) in Rule 28 of CGST Rules, 2017, to provide for taxable value of supply of corporate guarantee provided to a banking company or financial institution on behalf of the related person as 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher. It is also clarified that the valuation would stand irrespective of whether full ITC is available to the recipient of services or not.

*Note: Safe Harbor Rules issued by CBDT provide that commission or fee would be considered at 1% of the amount guaranteed in case of Corporate Guarantee given to a wholly owned subsidiary. A similar valuation principle has been considered for GST purposes as well.*

**Issues due to recent recommendations:**

- Whether the liability would recur on an annual basis or only in the first year the guarantee has been provided?**

This has not been clarified as yet. It seems to be that liability would arise only when a corporate guarantee is given and is deemed to be 1% of the guarantee value. The authors opine there must not be a recurring GST levy annually.

- When a corporate guarantee is given by an entity in India would it still count as an export?**

Although the basic criteria for exports are met, with the fixed valuation under Indian GST law, the ability to receive such an amount from foreign counterparts may be counterproductive. This will ensure that the transaction is not an export of service on account of the non-realization of foreign convertible currency. This will lead to a cost on the transaction, which goes against the general global practice and may make India not conducive to International markets.

- When a director ceases to be a director of the company where a guarantee has been provided, would the GST levy change?**

Yes, this is possible as the guarantor (ex-director) may seek consideration against the guarantee provided. In such case, the liability to pay GST would arise

on such person providing the guarantee under GST law, subject to applicability to register under the GST Act. The impending clarification only brings about clarity for director guarantees wherein GST would not be applicable where consideration is not obtained directly or indirectly.

- Whether a corporate guarantee can be considered as a supply under GST?**

Under erstwhile ST law, the criticality for determination of service requires consideration. In the absence of this the taxability u/s 66B of the Finance Act 1994 does not arise. However, under the CGST Act, Section 7 r/w Schedule I, activities performed without consideration can be deemed to be a supply when performed between related persons. The GST Council recommendation now brings in a deemed liability even if there is no consideration for valuation under GST. Although, to be covered under Schedule I, the activity must be a supply of service first. A corporate guarantee can be said to be a facilitation performed for the overall growth of the entity and a shareholder activity in the nature of quasi-capital which should not be construed as a provision of service. [*Micro Ink vs ACIT [(2016) 176 TTJ 8 (Ahd)]*].

Additionally, the option to dispute the levy is by considering such guarantees as actionable claims covered under Schedule III of the CGST Act, thereby excluding it from the supply definition.

- Whether the Government can implement the recommendations retrospectively, i.e. to bring in corporate guarantees into the tax net from July 2017 onwards?**

Keeping aside the fact that the levy is questionable, the valuation changes in the GST law expected by way of notification cannot have been known prior to this day. Ambiguity in law will always favour the assessee. Therefore, for the past, the law as is would be applicable, i.e. Rule 28 read with second proviso and Circular 199/2023-GST dated 17th July 2023 which allows for supply to be deemed as NIL where ITC is eligible (for entities within India only).



To Summarise the impact in an illustration:

Details	Personal Guarantee	Corporate Guarantee
<b>GST liability BEFORE 52<sup>nd</sup> Council Recommendation</b>	Directors/Others - NIL consideration – Not liable  <u>Others if consideration &gt; Rs. 0:</u>  Yes, liable	Associated Entp. - NIL consideration – Not liable  <u>If consideration &gt; Rs. 0:</u> <ul style="list-style-type: none"> <li>Where ITC eligible – Not liable (Circ. 199/2023) - within India</li> <li>Where RCM-ITC eligible &amp;</li> <li>Where ITC ineligible – Yes, liable</li> </ul>
<b>GST liability AFTER 52<sup>nd</sup> Council Recommendation</b>	Same as above	Liable irrespective of consideration being NIL or not.  1% of guarantee deemed valuation liable @ 18%.

*Note-1: Consideration is charged against Bank Guarantee – would be liable before and after.*

### Conclusion

Other than the fact that levy under GST remains questionable, where the recipient entity is eligible to ITC, even though the levy can be disputed, conservatively RCM can be discharged, and ITC can be claimed.

We also must hope that such changes in law are enacted prospectively.

Where GST liability pertains to an outward supply to entities outside India, the option of considering the same as export is hinged upon actual remittance from foreign entities which would deviate India from global best practices and drive out business from our country.

On the other hand, this imposition can be justified to bridge the gap between indigenous entities and those entities capable of obtaining such guarantees.

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## MCA Updates

### Issue of securities in Dematerialised Form by Private Companies

MCA vide notification no. G.S.R. 802(E), dated 27-10-2023 has mandated private companies (which are not Small Cos.) to issue securities (i.e., including shares) ONLY in demat form and facilitate demat process for all its securities. Accordingly, the said provision is applicable to companies other than Small Cos., which includes:

- Foreign subsidiary company,
- Domestic subsidiary company,
- Section 8 Cos.,
- Domestic holding company,
- Companies governed by any special Act.

The Companies shall comply with the said provisions by September 30, 2024 (18 months from March 31, 2023). The Companies shall ensure that entire holding of securities of its promoters, directors, Key Managerial Personnel have been dematerialised before making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer.

**BgSE Financials Limited**  
(CIN: U67120KA1999PLC025860)  
**Registrar and Share Transfer Agents (RTA)**  
Stock Exchange Towers, 4th Floor, No.51, 1st Cross, J. C. Road,  
Bangalore-560 027 India. Tel: 080-41329661/66673353  
Email: [cs\\_rta@bfsi.co.in](mailto:cs_rta@bfsi.co.in)/[vp\\_rta@bfsi.co.in](mailto:vp_rta@bfsi.co.in)  
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- Facilitating e-Voting for AGM/EGM/Postal Ballot etc.,
- Dividend payment/reconciliation and handling of queries related to shares/dividend transferred to IEPF Authority.
- MIS Reports to Clients and Compliances relating to Regulatory.
- Shareholder queries relating to Transfer / Transmission / Deletion of Name / Issue of Duplicate Certificate etc.,
- KYC updating as per latest SEBI notifications.

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# RECENT JUDICIAL PRONOUNCEMENTS - INDIRECT TAX



CA. Bhanu Murthy J S  
CA. Raghavendra C R

## Important decisions

### 1. State of Telangana and Others Vs Tirumala Constructions, 2023 SCC OnLine SC 1376

Issues before the Hon'ble Supreme Court as follows:

- Whether pursuant amendment to the Constitution vide the Constitution (101st Amendment) Act, 2016, (wherein entry 54 in list 2 to Schedule VII was amended) the States have power to amend the VAT laws upto 30.06.2017?
- Whether States could amend the State VAT laws after 1 year time limit provided under section 19 of the Constitution (101st Amendment) Act, 2016

#### Background to the above issues are as below:

- Telangana State VAT Act:** VAT act was sought to be amended to extend the period of limitation for re-assessment or revision. amendment was brought initially through an ordinance dated 17.06.2017 and the Governor then assented to the law, and it came into force on 02.12.2017.
- Gujrat State VAT:** Section 84A was introduced in the Gujarat Value Added Tax Act, 2003, amending time limit for revision of assessment, which was notified on 06.04.2018 and given retrospective effect from 1.4.2016.
- Maharashtra VAT:** Maharashtra VAT Act was amended on 9.06.2019, to provide for mandatory pre-deposit for filing appeals.

In all the above amendments, the issue was whether the respective States were competent to enact the amendments after 1.7.2017

On the first issue, the Court held that provisions of section 19 of the amendment Act, provides the sovereign legislative power, to both Parliament and state legislatures, to make necessary changes through amendment to the existing laws. However, such power is circumscribed by the time limit, indicated in the said section 19 of the Amendment Act. (i.e. one year, or till the new GST law was enacted).

On the issue of amendments after the aforementioned period of one year or the enactment of GST law, the Court held that the State legislature ceased to have any authority over the subject matter, because the original entry 54 had undergone a substantial change, and the power to change the VAT Act, ceased, on 01.07.2017, when the GST regime came into effect.

### 2. Commissioner of CGST, CST, Delhi East Vs Haldiram Marketing Pvt. Ltd. (2023) 11 Centax 23 (S.C.)

Considering the decision of the High Court of Madras in the case of Anjappar Chettinad A/C Restaurant v. Jt. Commissioner — 2021 (51) G.S.T.L. 125 (Mad.) and the clarifications issued by CBIC vide circular No. 334/3/2011-TRU, dated 28-Feb-2011, the Tribunal held that no service tax could be levied on sale of prepared food over the counter (takeaways). Further on the aspect of sharing of premises, the Tribunal relying on the decision of the Supreme Court in Gujarat State Fertilizers & Chemicals Ltd. v. Commissioner of C. Ex. [2016 (45) S.T.R. 489 (S.C.), held that sharing of expenditure cannot be treated as service rendered by one to another.

On appeal by the Service Tax department, the Hon'ble Supreme Court dismissed the civil appeal.

### 3. Commissioner, Customs Central Excise And Service Tax Vs Shapoorji Pallonji & Company Pvt. Ltd. (2023) 11 Centax 180 (S.C.)

**Background:** Under the erstwhile service tax provisions, notification 25/2012-ST provided certain exemptions on supply of services to governmental authorities. They said phrase 'governmental authorities' was initially defined as below:

*"(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution."*

later the same was amended w.e.f. 30.01.2014 as follows:

*"(s) "governmental authority" means an authority or a board or any other body;*

*(i) set up by an Act of Parliament or a State Legislature; or*

*(ii) established by Government,*

*with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution."*

The issue before the honorable Supreme Court was whether the later part of the condition "with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution" would be applicable only to "(ii) established by Government" or would be applicable to (i) set up by an Act of Parliament or a State Legislature;

Where condition of 90% or more participation.... is applicable only to clause (ii), supply of services to IIT Patna would qualify for exemption.

**Held:** In this background the Supreme Court held that the said condition has to be interpreted to mean that the condition of 90% or more participation.... would be applicable only to the clause(ii) of the definition for the following reasons :

- A) Purpose of amending the above definition is to expand /broaden the scope of the definition. Where the condition of '90% or more....is made applicable to both the clauses, then the amendment becomes unworkable.
- B) The conjunction 'or' between sub-clauses (i) and (ii) clearly divides the two clauses in two parts with the first part completely independent of the second part. The first part is by itself complete and capable of operating independently

#### 4. Alva's Education Foundation Vs State of Karnataka, (2023) 12 Centax 9 (Kar.)

**Background:** The assessee runs institutions imparting higher secondary education and education recognized as "qualification" in law. The assessee as part of the curriculum, collects fee towards CET/ CPT coaching from its students. The assessing officer

denied exemption for such fee on the ground that only tuition fee towards courses which result in educational qualifications would be eligible for exemption.

**Held:** In the writ proceedings, the Hon'ble Court remitting the matter back to the assessing authority for the purpose of re-adjudication, observed that assessing authority, who had to examine the expanse of the expression educational services contemplated under the exemption Notification dated 28-6-2017 in the light of the Circular dated 3-8-2022, had to necessarily consider the same in the light of the paragraph 4.2 and the first sentence in paragraph 4.3. However, said authority overlooking the said paragraphs, has passed the order. Hence the same needs to be re-adjudicated on the basis of the above findings of the Court.

#### 5. M/S Siddhan Intelligence Pvt Ltd Vs. The Superintendent, Vanagaram, Range Iii, Chennai 2023-Tiol-1360-Hc-Mad-Gst

Petitioner has challenged the impugned order dated 07.12.2022 issued in Form GST REG-19 cancelling the GST registration. It was submitted by Petitioner that the petitioner had no business and no returns were filed by the petitioner - Counsel for Revenue would submit that the Department is unaware as to whether there are any transactions made by the petitioner during the period when returns were not filed by the petitioner and therefore on this count also this writ petition is liable to be dismissed.

Hon'ble Madras High Court referred to the judgment in TvI.Suguna Cut Piece Centre [2022-TIOL-261-HC-MAD-GST] wherein, this Court had concluded that no useful purpose will be served by keeping the dealers/assesseees outside the bounds of GST Act as they will continue to carry on the business, High Court is inclined to set aside the impugned order by directing the respondent to revive the GST registration of the petitioner with liberty to the respondent to initiate appropriate proceedings against the petitioner for imposing penalty and for recovering any tax due, to which, the petitioner may have failed to pay during the period, no returns were filed and accordingly, the Writ Petition was allowed.

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# FINANCIAL REPORTING AND ASSURANCE



CA. Vinayak Pai V

## KEY UPDATES A. AS|Ind AS

### 1. ICAI – Accounting Standards for LLPs (ED)

At present, Accounting Standards (AS) issued by ICAI, and the criteria prescribed by it for applicability of 'AS to non-company entities' are applicable to LLPs. Section 34A of the LLP Act, 2008 prescribes that the Central Government may, in consultation with NFRA prescribe the standards of accounting as recommended by ICAI for LLPs.

Now, on 27<sup>th</sup> October, 2023, the ICAI has issued an **Exposure Draft (ED)** on *Accounting Standards for Limited Liability Partnerships*.

Key Points from the ED include:

- ◆ **AS notified under the Companies (Accounting Standards) Rules, 2021** [AS 1 to 5, 7, 9 to 19 and 21 to 29] shall be applicable to LLPs. AS 20 (EPS) is exempted for LLPs.
- ◆ An **LLP which is a subsidiary, joint venture or associate of another entity which is applying Ind AS** notified under Companies (Indian Accounting Standards) Rules, 2015, **is permitted to prepare its financial statements in accordance with Ind AS.**
- ◆ For applicability of ASs, **LLPs shall be classified into four categories**, namely, Level I, Level II, Level III and Level IV.
- ◆ As per AS 1, 'accrual basis of accounting' is one of the fundamental accounting assumptions and, accordingly, aforesaid Accounting Standards are based on accrual basis of accounting. However, the LLP Act permits LLPs to maintain books of accounts on cash system of accounting. Therefore, **if an LLP is following cash basis of accounting, it shall apply Accounting Standards** (read together with the exemptions) **to the extent applicable in the context of cash basis of accounting.**

The ED is open for comments till 27<sup>th</sup> November, 2023.

Link to the ED -

<https://resource.cdn.icai.org/76835asb61909.pdf>

### 2. EAC Opinion – Recognition of miscellaneous scrap items generated in the plant and scrapped assets awaiting disposal

The November, 2023 edition of the ICAI Journal has carried an Expert Advisory Committee (**EAC**) **Opinion - Recognition of miscellaneous scrap items generated in the plant and scrapped assets awaiting disposal under Ind AS framework.**

**Background** – A Public Sector Enterprise engaged in bauxite mining, alumina and aluminium manufacturing, power generation at captive power plant and whose plant generates process scrap and miscellaneous scrap sought the EAC's opinion as to whether its practices (recognising miscellaneous scrap as inventory; valuation of scrap at its fair value; and recognising income out of sale/change in stock as 'other income') were appropriate.

A summary of **key takeaways** from the opinion:

- ◆ **Miscellaneous scrap items** cannot be considered as finished product/by-product held for sale, or intermediate product/work-in-progress, or raw material/inputs/supplies to be consumed in the production process and hence it **does not meet the definition of 'inventories' as per Ind AS 2.**
- ◆ Scrapped items of PPE/used spares treated as PPE should be continued to be carried in the books at their carrying amount unless these items are impaired as per Ind AS 36. The company should also examine whether such scrapped items meet the classification and recognition criteria of 'non-current assets held for sale' (Ind AS 105).
- ◆ At the time of sale of the scrapped items of PPE/used spares treated as PPE, these should be derecognised, with gain or loss on sale being recognised in P&L and may be presented as 'other income'.
- ◆ Regarding scrapped items, such as, used spares not treated as PPE, any income arising on sale of such scrap should be recognised as 'other operating revenue' in P&L.

Link to the Opinion –

<https://resource.cdn.icai.org/76909cajournal-nov2023-31.pdf>

## B. ASSURANCE

### 3. ICAI - Form prescribed for 'Fees related disclosures' [Vol. I, Code of Ethics]

The provisions relating to 'Fees – Relative Size' contained in Volume I of Code of Ethics is effective from 1st October, 2022, Under the revised provisions of 'Fees-Relative size', disclosure is required to be made to the Institute in case where the gross annual professional fees from an Audit client exceeds the prescribed threshold percentage for two consecutive years. Now, on 6th October, 2023, the ICAI has **prescribed the Form for making the related disclosure** that includes a 'Declaration of Safeguards and Independence'.

Link to the Announcement -

<https://resource.cdn.icai.org/76429esb61712.pdf>

### 4. ICAI – Technical Guide on Internal Audit of Pharmaceutical Industry (2023 Edition)

On 11<sup>th</sup> October, 2023, the ICAI released the 2023 edition of the *Technical Guide on Internal Audit of Pharmaceutical Industry* that aims to provide comprehensive information and guidance to internal auditors. It aims to equip internal auditors with the knowledge necessary to effectively assess and evaluate the risk management and internal control systems, management processes and compliance frameworks specific to the pharmaceutical sector.

Link to the Guide -

<https://resource.cdn.icai.org/76499biam617440iapi.pdf>

### 5. ICAI – Manual on Concurrent Audit of Banks (2023 Edition)

On 11<sup>th</sup> October, 2023, the ICAI released a revised and updated 2023 edition of the *Manual on Concurrent Audit of Banks*.

Link to the Manual -

<https://resource.cdn.icai.org/76498biam617440mcab.pdf>

### 6. IAASB – Narrow Scope Amendments to ISA 700 and ISA 260

On 12<sup>th</sup> October, 2023, the International Auditing and Assurance Standards Board (IAASB) issued **narrow scope amendments to ISA 700 (Revised), Forming an Opinion and Reporting on Financial Statements and ISA 260 (Revised), Communication With Those Charged With Governance** aimed at enhancing **auditor's report transparency on independence** to reflect revisions in

the IESBA Code of Ethics for Professional Accountants (including International Independence Standards).

The IESBA Code now requires firms to publicly disclose when a firm has **applied the independence requirements for public interest entities** in an audit of the financial statements of an entity. The IAASB's amendments **provide a clear and practical framework for implementing this new requirement through appropriate communication in the auditor's report and with those charged with governance.**

Link to the Amendments -

<https://www.iaasb.org/publications/narrow-scope-amendments-isa-700-revised-forming-opinion-and-reporting-financial-statements-and-isa>

### 7. IESBA Staff Q&A – Engagement Team Group Audit Independence

On 23<sup>rd</sup> October, 2023, the International Ethics Standards Board for Accountants (IESBA) released a *Q&A Publication, Revisions to the Code Relating to the Definition of Engagement Team and Group Audit*, designed to illustrate and explain aspects of the revisions in the International Code of Ethics for Professional Accountants (including International Independence Standards).

Link to the Q&A –

<https://www.ethicsboard.org/news-events/2023-10/iesba-staff-releases-qas-support-adoption-and-implementation-international-independence-standard>

## C. NFRA

### 8. Order u/s 132(4) – Lexus Granito India Ltd.

On 4<sup>th</sup> October, 2023, the National Financial Reporting Authority (NFRA) issued an order (No. 59/2023) u/s 132(4) of the Companies Act finding an Audit Firm and its Engagement Partner (EP) that conducted the statutory audit of Lexus Granito India Limited for F.Y.2019 and 2020 guilty of professional misconduct. **The Audit Firm and the EP were imposed monetary penalties of ₹10 lakhs and ₹5 lakhs respectively. Additionally, the EP has been debarred for three years.**

NFRA's investigations, inter-alia, found: the company had unilaterally written back substantial amounts of its liabilities and treated them as other income resulting in overstatement of profits; the company valued finished goods at the estimated market price in violation of accounting standard while the auditors merely reported the non-compliance in KAMs; the auditors failed to

attend the physical count of inventory; there were differences between the KAMs documented and as included in the Annual Report; and the auditors failed to obtain sufficient appropriate audit evidence for the audit of related party transactions.

Link to the Order -

<https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2023/10/202310051548348203.pdf>

#### D. SEBI

##### 9. Compliance with SEBI (LODR) Regulations – Relaxation extended for applicability of Reg. 36(1)(b) and Reg. 44(4)

SEBI vide Master Circular dated 11th July, 2023 inter alia had relaxed the applicability of regulation 36(1)(b) for Annual General Meetings and regulation 44(4) of the LODR regulations for general meetings (in electronic mode) till 30th September, 2023.

Now, SEBI vide Circular No. SEBI/HO/CFD-PoD-2/P/CIR/2023/167 dated 7th October, 2023 **has extended the relaxation till 30th September, 2024**. This is in view of MCA's General Circular No. 09/2023 dated 25th September, 2023 that extended the relaxation from sending physical copies of financial statements (including Board's Report and Auditor's Report) to shareholders for AGMs conducted till 30th September, 2024.

Link to the Circular –

[https://www.sebi.gov.in/legal/circulars/oct-2023/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-reg-\\_77781.html](https://www.sebi.gov.in/legal/circulars/oct-2023/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-reg-_77781.html)

#### E. RBI

##### 10. Presentation of Unclaimed Liabilities transferred to Depositor Education and Awareness Fund

The RBI vide Notification No. RBI/2023-24/71 DOR. ACC.47/21.04.018/2023-24 dated 25<sup>th</sup> October, 2023 has **updated the Reserve Bank of India (Financial Statements – Presentation and Disclosures) Directions, 2021** w.r.t presentation of **unclaimed liabilities transferred to Depositor Education and Awareness (DEA) Fund**.

The extant Directions require commercial banks to present all unclaimed liabilities, where the amount due has been transferred to the DEA Fund established under the DEA Fund Scheme, 2014, under 'Schedule 12- Contingent Liabilities - Other items for which the bank

is contingently liable'.

RBI has now advised that all **co-operative banks shall present all unclaimed liabilities (where the amount due has been transferred to DEA Fund) under 'Contingent Liabilities – Others'**. Further, **all banks** are required to specify in the **disclosures in the notes to accounts** that balances of the amount transferred to DEA Fund are included under 'Schedule 12 - Contingent Liabilities - Other items for which the bank is contingently liable' or 'Contingent Liabilities - Others,' as the case may be.

The instructions are **applicable to all commercial and cooperative banks** for preparation of financial statements for the financial year ending **31<sup>st</sup> March, 2024** and onwards.

Link to the Notification -

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12552&Mode=0>

#### F. CBDT

##### 11. Audit Report in Form No. 10B/10BB – Order u/s 119

On 9<sup>th</sup> October, 2023, the CBDT issued an Order u/s 119 of the Income-tax Act whereby it has stated that for the purposes of providing details of 'persons making substantial contribution' in **Form No. 10B (Annexure in row 41)** and **Form No. 10BB (Annexure in row 28)** for **A.Y. 2023-24**: a) the details of persons making substantial contribution may be given w.r.t. those persons **whose total contribution during the previous year exceeds fifty thousand rupees**; b) details of relatives of such persons, if available; and c) details of concerns in which such person **has substantial interest** may be provided, if available.

Link to the Order -

<https://incometaxindia.gov.in/communications/circular/circular-17-2023.pdf>

#### G. USGAAP

##### 12. Presentation of Unclaimed Liabilities transferred to Depositor Education and Awareness Fund

On 9<sup>th</sup> October, 2023, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2023-06, **Disclosure Improvements – Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative**. The amendments clarify/improve disclosure and presentation requirements of various USGAAP Topics and aligns the requirements in the USGAAP Codification with the SEC's regulations.



The amendments, inter-alia, include:

- ◆ Accounting policy to be disclosed in annual periods where cash flows associated with derivative instruments and their related gains/losses are presented in the statement of cash flows.
- ◆ When there has been a change in the reporting entity, the entity is required to disclose any material prior-period adjustment and the effect of the adjustment on retained earnings in interim financial statements.
- ◆ Disclosure required of the methods used in the diluted EPS computation for each dilutive security.
- ◆ Entities that issue preferred stock are required to disclose preference in involuntary liquidation if the liquidation preference is other than par or stated value.

Link to the ASU -

[https://www.fasb.org/page/getarticle?uid=fasb\\_Media\\_Advisory\\_10-09-23](https://www.fasb.org/page/getarticle?uid=fasb_Media_Advisory_10-09-23)

## H. SELECT PUBLICATIONS

1. UK FRC – *Annual Review of Corporate Reporting 2022/23*. [5<sup>th</sup> October, 2023.] [[https://www.frc.org.uk/documents/6482/Annual\\_Review\\_of\\_Corporate\\_Reporting\\_2022-2023.pdf](https://www.frc.org.uk/documents/6482/Annual_Review_of_Corporate_Reporting_2022-2023.pdf)]
2. The Institute of Internal Auditors – *Navigating a Technology Risk-Filled Horizon*. [10<sup>th</sup> October, 2023.] [<https://www.theiia.org/en/content/communications/press-releases/2023/october/it-auditors-identify-cyber-risks-data-privacy-and-talent-shortages-among-the-biggest-technology-challenges-companies-face/>]
3. IASB – *Providing Insights into Cash Flow Economics*. [10<sup>th</sup> October, 2023.] [<https://www.ifrs.org/content/dam/ifrs/resources-for/investors/investor-perspectives/ip-providing-insights-oct2023.pdf>]
4. UK FRC – *Materiality in Practice: Applying a Materiality Mindset*. [12<sup>th</sup> October, 2023.] [<https://www.frc.org.uk/library/frc-lab/themes/materiality/materiality-in-practice-applying-a-materiality-mindset/>]
5. US PCAOB – *Spotlight: Inspection Observations Related to Engagement Quality Reviews*. [12<sup>th</sup> October, 2023.] [[https://assets.pcaobus.org/pcaob-](https://assets.pcaobus.org/pcaob-dev/docs/default-source/documents/eqr-spotlight.pdf?sfvrsn=95a345e6_2)

[dev/docs/default-source/documents/eqr-spotlight.pdf?sfvrsn=95a345e6\\_2\]](https://assets.pcaobus.org/pcaob-dev/docs/default-source/documents/eqr-spotlight.pdf?sfvrsn=95a345e6_2)

6. IAASB – *Frequently Asked Questions – Proposed ISSA 5000: The Application of Materiality by the Entity and the Assurance Practitioner*. [25<sup>th</sup> October, 2023.] [<https://ifacweb.blob.core.windows.net/publicfiles/2023-10/IAASB-International-Standard-Sustainability-Assurance-5000-Materiality-FAQ.pdf>]

## I. SELECT GLOBAL ENFORCEMENT ACTIONS/AUDIT INSPECTION REPORTS

### Enforcement Actions

#### 1. US PCAOB

On 24<sup>th</sup> October, 2023, the US Public Company Accounting Oversight Board (PCAOB) censured an Audit Firm and imposed a monetary penalty of \$175,000 based on its findings that the Firm violated PCAOB rules and standards in connection with four audits. The Audit Firm used the work of two public accounting firms not registered with the PCAOB in a substantial role capacity in four audits and repeatedly violated PCAOB rules and professional standards in connection with those audits. [PCAOB Release No. 105-2023-026]

#### 2. UK FRC

On 12<sup>th</sup> October, 2023, the UK Financial Reporting Council (FRC) issued two Final Settlement Decision Notices (SDNs) under the Audit Enforcement Procedure and imposed sanctions against an Audit Firm and its two former audit partners following the conclusion of investigations into the audits of Carillion plc. A financial sanction of £18,550,000 and £2,450,000 was imposed on the Audit Firm for the two SDNs respectively.

The FRC reported that in a wide range of areas and items: the Audit Firm failed to gather sufficient appropriate audit evidence to enable it to conclude that the financial statements were true and fair, and failed to consider the implications for the audit of evidence suggesting that Carillion’s accounting might have been incorrect or unreliable; and the Audit Firm failed to conduct its audit work with an adequate degree of professional scepticism.

### Extracts from US PCAOB Inspection Reports of Audit Firms

3. **Inspection report of an Audit Firm Headquartered in New Delhi.**

**Audit deficiencies identified** -The audit firm selected for testing a control that consisted of a review of customer contracts for proper revenue recognition, including the identification and evaluation of terms and conditions in such contracts that affect the recognition of certain revenue. The firm did not evaluate the review procedures that the control owner performed, including the procedures to identify items for follow up and the procedures to determine whether those items were appropriately resolved.

The sample sizes the audit firm used in certain of its substantive procedures to test revenue were too small to provide sufficient appropriate audit evidence because these procedures were designed based on a level of control reliance that was not supported due to the deficiency in the firm's control testing discussed above.

The firm did not perform sufficient substantive procedures to evaluate whether certain revenue was recognized in conformity with IFRS 15, as it did not evaluate whether: certain provisions in customer contracts represented distinct performance obligations and, if so, whether such performance obligations should be recognized at a point in time or over the relevant service period; and the issuer's allocation of transaction price to a series of performance obligations was in conformity with IFRS 15. [PCAOB Release No. 104-2023-118]

#### 4. Inspection report of an Audit Firm Headquartered in Texas, US.

**Audit deficiencies identified:** In our review, we identified a deficiency in the financial statement audit related to Accounts Receivable, for which the firm identified a fraud risk. The firm received electronic responses to its accounts receivable confirmation requests. The firm did not consider performing procedures to address the risks associated with electronic responses, such as verifying the source and contents of the confirmation responses. [PCAOB Release No. 104-2023-142]

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## KSCAA welcomes new members - September and October - 2023

Sl. No.	Name	Place
1	Shripada Sooryanarayana Hegde	Bengaluru
2	Sharath C	Bengaluru
3	Ankur Agrawal	Bengaluru
4	Ajit Mundaganur	Mudhol
5	Nekar Prashanth Kumar	Bengaluru
6	Prashanth Kumar	Bengaluru
7	Sandeep H N	Bengaluru
8	Pratiksha M Pai	Bengaluru
9	Sumit Wali	Belagavi
10	Ankur Agrawal	Bengaluru
11	Sharath C	Bengaluru
12	Ayush Sancheti	Raichur
13	Savitha Nui	Bengaluru
14	Reddy Shekar P	Bengaluru
15	Veeresh Krishna Alawandi	Bengaluru
16	Prabudh J Shetty	Bengaluru
17	Sasikala Ravi Venkatesan	Chennai
18	Abilash R	Bengaluru
19	Keerthi Shivanand Anand	Bengaluru
20	N Alamelu	Chennai
21	Dhanalakshmi N	Bengaluru

# INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA BORDER ENFORCEMENT UNDER TRIPS (PART - XXXIX OF IPR SERIES)



Adv. M. G. Kodandaram

## Border Enforcement in Protecting IPRs

As previously narrated, violations of IPRs frequently occur during their application, often at the hands of fraudsters seeking to profit from the assets of others. These deliberate breaches of IP rights are particularly more prevalent in the context of global trade and commerce, where transactions occur on a massive scale. While IP laws are applicable at the National level, enforcing them across international jurisdictions poses significant challenges. One of the critical aspects of TRIPS is the stipulations for border enforcement, that aims to combat the unauthorised (Illegitimate) import and export in counterfeit and pirated goods that infringe on IPRs.

To address these challenges in global trade, the TRIPS Agreement includes provisions called as '*Special Requirements Related to Border Measures*' in Article 51 to 60, popularly known as Customs Border Enforcement Measures. These statutes are designed to facilitate and the enforcement of IPRs in cases of violations during the cross-border movement of goods. The TRIPS Agreement requires that Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful Trademark Counterfeiting or Copyright Piracy on a commercial scale. They also must provide for remedies such as imprisonment, monetary fines and seizure, forfeiture, and destruction of the infringing goods and of any materials and implement predominantly used for the commission of the offence. The significance of international border enforcement within TRIPS, its advantages, and challenges in protecting IPRs, nurturing fair trade practices in the global marketplace are deliberated in this article.

## IP Violations in Transboundary Trade

The violations in IPRs during international trade results in production, manufacture, and trade in counterfeited and pirated goods across the globe. Counterfeiting is widely referred to as a series of illicit activities associated with IPR infringements and is becoming a common incident affecting a variety of industries and products. Before

familiarising with the Import export controls available in TRIPS, some commonly used terms in IP related global business are needed to be understood, which are narrated in the following paras.

(A) "*Infringement*" is a commonly used term referring to actions that involve the violation of a rule or the breach of a law. In the context of IPRs, infringement typically occurs when an individual /entity exploits someone else's IP for their own commercial benefits, disregarding the owner's rights over that IP. IPRs are infringed upon when a product, invention, or creation protected by IPR laws are duplicated, utilized, produced, imported, exported, sold, or otherwise employed without the prior consent or proper authorization of the rights holder or their representatives.

(B) "*Counterfeiting*" - This refers to the production of unauthorized replicas of branded goods. This concept is formally defined within the enforcement provisions of the TRIPS as: "Counterfeit trademark goods shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation."

(c) "*Copyright infringement*" - It is the act of utilizing or producing material protected by copyright without the express permission of the copyright holder. In simple terms, when someone employs a work without the owner's authorization, it constitutes copyright infringement. This issue is particularly prevalent in the entertainment industry, particularly in the realms of music and film. It is often equated with piracy or the unauthorized use of someone's original creation, especially when the infringer benefits from it at the expense of the original creator.

(D) "*Piracy*" - This encompasses the unapproved duplication of an item protected by an IPR. According to the TRIPS Agreement, "Pirated copyright goods shall



refer to any items that are unauthorized copies, made in the country of production without the consent of the rights holder or an authorized representative, and that are directly or indirectly created from a source, where making such a copy would have constituted a copyright or related rights violation according to the laws of the importing country." It is important to note that the Piracy is not limited to physical reproduction but can also manifest online.

(E) "*Pirated copyright goods*" according to TRIPS, shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

The existence of counterfeiting and piracy is detrimental to a well-functioning economy, restraining investment, and innovation, hampering growth of national economies, depriving legitimate enterprises and the state of its revenue. Counterfeiting and piracy have a negative impact upon consumers, businesses, and governments.

### **Border Measures as per TRIPS**

The Special requirements related to Border Measures as per the agreement are that members shall, in conformity with the provisions set out, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the Customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of IPRs, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the Customs authorities of the release of infringing goods destined for exportation from their territories.

The TRIPS Agreement provides for certain enforcement procedures related to border measures, to enable a right-holder who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application for the suspension by the Customs authorities of the release into free circulation of such goods. Guidelines are prescribed with respect to suspension of release by Customs authorities, application for such procedures, security, or

equivalent assurance, notice of suspension, duration of suspension indemnification of the importer and of the owner of the goods, right of inspection and information, ex officio Action, and remedies.

At present all Indian IP Laws have been modified suitably, to be in sequence and synchronisation with TRIPs agreement. The TRIPs proposals of Border measure have to be in place in respect of copyright and trademark infringements only. But the Indian legislation has expanded the coverage by adding three more IPRs namely the 'Patents'(now withdrawn with effect from 22nd June 2018), 'Designs' and 'Geographical Indications' for protection from infringements during import and export trade. Also, necessary amendments have been incorporated to the Customs Act with a view to be compliant with TRIPs details of which are narrated in the following parts.

In India the Department of Industrial Policy and Promotion (DPIIT), Ministry of Commerce & Industry is the nodal Department which has been entrusted with implementing the IP Laws. This Department has been taking all relevant and necessary steps to implement the objectives of the National IPR Policy including strengthening IPR administration and management to ensure ease of access to all stakeholders. The Office of the Controller General of Patents, Designs & Trademarks (CGPDTM) is involved in the implementation of IPR related laws in the country. All activities about administration and management of IPRs granted, primarily in the domestic trade, are overseen by this department.

### **Customs Border Measures**

The TRIPS Agreement recognized that border enforcement at source will not always be possible and that in any event not all countries are Members of the TRIPS Agreement. According to Article 51 of the Agreement, the goods which must be subject to border enforcement procedures must include at least counterfeit trademark and pirated copyright goods that are being presented for importation. The Agreement therefore recognises the importance of border enforcement procedures at the time of Importation that will enable right holders to obtain the cooperation of customs administrations so as to prevent the release of infringing imports into free circulation.

The Customs department in our country serves a vital role in revenue collection on imported and exported goods at the borders, as well as in enforcement of various National Laws at these border points. Consequently, Customs plays a pivotal role in safeguarding IP laws at the entry and exit points.

Considering the obligation to implement border measures as envisaged in Articles 51 to 60 of the WTO Treaty on TRIPs, a need was felt to define the role of Customs precisely in combating IPR infringements at the borders. India faces a significant influx of counterfeit and infringing goods through its porous borders. In response, the government has instituted prohibitions on the import and export of IP-infringing products. Through the Customs Act of 1962 and the Intellectual Property Rights (Imported Goods) Enforcement Rules of 2007, the government has established mechanisms to tackle the challenge of IP infringement. Armed with stringent and mandatory procedures and regulations, Customs ensures the protection of rights for IP holders.

Notification No 49/2007-Customs dated 8-5-2007 has been issued, which prohibits import of goods infringing IPRs of the “right holders” under The Copyright Act, 1957, the Trademarks Act, 1999, the Patents Act, 1970 (now omitted with effect from 22nd June 2018), the Designs Act, 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999. Besides, the procedure for registration of a notice with the Customs by right holders and the conditions for such registration, etc. have been laid down in the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 notified under notification 47/2007-Customs (NT) dated the 8th of May, 2007. The said Rules lay down a detailed procedure to be followed by the right holders or their authorized representatives as also by the Customs, for seeking suspension of release of suspect imported goods.

Customs enforcement has proven highly effective in upholding the IPRs of brand owners by halting the entry of such goods at international borders, thus preventing their proliferation in primary and retail markets. Customs plays a pivotal role in curbing the influx of counterfeits and pirated goods into legitimate commerce channels by intercepting bulk shipments of imported infringing goods, preventing their dispersion in domestic distribution channels. If these goods go undetected and evade Customs scrutiny, the task of locating them in local markets becomes more challenging, intricate, and time-consuming for other law enforcement agencies. Consequently, Customs stands at the forefront of protecting consumers from potentially hazardous counterfeit and pirated goods. Furthermore, Customs now holds responsibility for the safe and environmentally

responsible disposal of confiscated IP-infringing goods, minimizing both costs and potential environmental harm associated with bottlenecks in the storage and disposal of such items.

For smooth implementation of the IPR regime, IPR Cells have been constituted in each Custom House / Commissionerate. The IPR Cell is vested with the responsibility of verifying the applications, completing web-enabled registration formalities, and making correspondence with the Risk Management Division (RMD) and other Customs formations. Further, any import involving suspected infringement of IPRs will also be handled by the IPR Cell. All instances of Suo-moto interdiction of the import consignments by the Customs involving possible infringements are also monitored by IPR Cell.

However, the primary responsibility for taking measures to protect IPRs lies with Right holders themselves. The pre-requisite for Customs intervention is that IP owners/ entities must protect what they have created, by registering with a recognized body. The second stage involved is where the right holder utilizes the services of Customs for effective enforcement of its legal IP rights. Customs can also intervene on its own initiative, by suspending the clearance of goods where there are grounds for suspecting the IPRs have been infringed.

The need to protect IP rights across borders has emerged as a significant issue. The Enforcement Rules, 2007, issued to strengthen border measures for IP protection in consonance with TRIPs and World Customs Organisation (WCO) Model. These Rules offer Rights Holder an option to register such rights with Customs Authorities, known as Customs Recordal system. A software module called Automatic Recordation & Targeting System (ARTS) has been developed and used for facilitating IP holders using digital means. Once rights are recorded, Customs Authorities can detain and seize goods suspected to be goods infringing IP. The procedural details to be followed by a right holder to obtain mandated protection by Customs during IP violations during global trade will be deliberated in the coming part of the article.

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CA. Vinay Thyagaraj

# RERA – IMPORTANT DEFINITIONS AND REFERENCES IN ALL OTHER STATUTES

Indeed, the real estate sector plays a pivotal role in addressing the nation's housing and infrastructure needs. As the second-largest contributor to India's GDP, the industry employs a vast workforce across various skill levels. Despite its substantial growth in recent decades, the sector has remained largely unregulated, leading to issues such as a lack of professionalism, accountability, standardization, and adequate consumer protection. While the Consumer Protection Act, 1986 provides a recourse for buyers in the real estate market, it primarily offers curative remedies and is not comprehensive enough to address the concerns of both buyers and promoters. The absence of standardization has further hindered the industry's healthy and orderly growth.

The need for regulating the real estate sector has been repeatedly highlighted in various forums. The Real Estate (Regulation and Development) Act, 2016 (RERA) was a significant step towards addressing these concerns. RERA aims to establish a transparent and accountable real estate sector, protect the interests of home buyers, and promote fair practices among promoters.

## *The status as on 6th Nov 2023 as per ministry of Housing and Urban Affairs-*

1. All States/UTs have notified rules under RERA except Nagaland, which is under process to notify the rules.
2. 32 States/UTs have set up Real Estate Regulatory Authority (Regular - 27, Interim – 05). Ladakh, Meghalaya, Nagaland
3. and Sikkim are yet to establish Real Estate Regulatory Authority.
4. 28 States/UTs have set up Real Estate Appellate Tribunal (Regular -24, Interim – 04). Arunachal Pradesh, Jammu &
5. Kashmir, Ladakh, Meghalaya, Mizoram, Nagaland, Sikkim and West Bengal are yet to establish Appellate Tribunal.
6. Regulatory Authorities of 30 States/UTs have operationalized their websites under the provisions of RERA. Arunachal
7. Pradesh and Manipur are yet to operationalize.
8. 26 States/UTs have appointed Adjudicating Officer. 10 States/UTs i.e., Arunachal Pradesh, Bihar, Manipur, Meghalaya,
9. Nagaland, Sikkim, Uttarakhand, West Bengal, Jammu & Kashmir, Ladakh are yet to appoint Adjudicating Officer.
10. **1,15,973 Real Estate Projects and 82,572 Real Estate Agents** have registered under RERA across the Country.
11. **1,15,901 Complaints have been disposed-off** by the Real Estate Regulatory Authorities across the Country.

You're absolutely right. The Real Estate (Regulation and Development) Act, 2016 (RERA) is a comprehensive regulatory statute that governs the real estate sector in India. It provides clear and unambiguous definitions for various terms related to real estate, ensuring consistency and clarity in the interpretation and application of the law.

The importance of RERA's definitions is further emphasized by the fact that other statutes, such as the Income Tax Act, GST, FEMA, and PMLA, rely on RERA for any definitions related to real estate. This ensures that there is a uniform understanding of these terms across different legal frameworks, which is crucial for effective enforcement and compliance.

Here are some specific examples of how RERA's definitions are used in other statutes:

1. The Income Tax Act uses the RERA definition of "real estate project" to determine which projects are eligible for certain tax benefits.



2. The GST Act uses the RERA definition of "carpet area", "Promoter", "Real Estate Project" to calculate the GST payable on the sale of real estate.
3. The FEMA regulations use the RERA definition of "real estate" to determine which transactions are subject to foreign exchange restrictions.
4. The PMLA Act uses the RERA definition of "promote" to determine which individuals or entities can be prosecuted for money laundering offenses related to real estate.

By providing clear and consistent definitions for real estate terms, RERA has helped to streamline the regulatory environment and make it easier for businesses and individuals to comply with the law. This has contributed to a more transparent and accountable real estate sector in India.

The definitions in the RERA Act and the Karnataka RERA Rules are important for several reasons. They:

- ◆ Provide clarity and consistency in the interpretation of the Act and the Rules.
- ◆ Help in identifying the scope of the Act and the Rules.
- ◆ Facilitate the effective implementation of the Act and the Rules.
- ◆ Protect the interests of all stake holders including allottees and real estate agents.
- ◆ By understanding the definitions in RERA, individuals can better understand their rights and obligations under the Act. This can help in preventing disputes and ensuring that the real estate sector operates in a fair and transparent manner

Sec	Definition	Sec	Definition	Sec	Definition
2(a)	Adjudicating officer	2(p)	Competent authority	2(ze)	Notification
2(b)	Advertisement	2(q)	Completion certificate	2(zf)	Occupancy certificate
2(c)	Agreement for sale	2(r)	Day	2(zg)	Person
2(d)	Allottee	2(s)	Development	2(zh)	Planning area
2(e)	Apartment	2(t)	Development works	2(zi)	Prescribed
2(f)	Appellate tribunal	2(u)	Engineer	2(zj)	Project
2(g)	Appropriate Government	2(v)	Estimated cost of real estate project	2(zk)	Promoter" means
2(h)	Architect	2(w)	External development works	2(zi)	Prospectus
2(i)	Authority	2(x)	Family	2(zm)	Real estate agent
2(j)	Building	2(y)	Garage	2(zn)	Real estate project
2(k)	Carpet area	2(z)	Immovable property	2(zo)	Regulations
2(l)	Chairperson	2(za)	Interest	2(zp)	Rule
2(m)	Commencement certificate	2(zb)	Internal development works	2(zq)	Sanctioned plan
2(n)	Common areas	2(zc)	Local authority	2(zr)	Words and expressions
2(o)	Company	2(zd)	Member		

**2(a)"adjudicating officer" means the adjudicating officer appointed under sub-section (1) of Section 71;**

Judicial officer who is or has been a District Judge appointed to be an adjudicating officer for holding an inquiry in the prescribed manner, for adjudging compensation under Section 12, 14, 18 & 19 of the RERA Act 2016

The adjudicating officer can only admit, hear the matters relating to claim of any compensation by the aggrieved person for any violation or contravention of the provisions under this Act or any rules and regulations made thereunder against any promoter or allottee or real estate agent.

Hence any compliant other than for a compensation, the

matter shall be heard by the Authority.

*THE SUPREME COURT OF INDIA in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs STATE OF UP & ORS. ETC*

*HIGH COURT OF CHHATTISGARH, BILASPUR in the case of M/s. Gold Bricks Infrastructures Pvt. Ltd.*

**2(b)"advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;**

The definition of advertisement is exhaustive to cover the various mode, form and medium – it includes –

- a. Print of any type like publication in newspaper, magazine, brochure, pamphlets, circulars, notice, leaflets, prospectus
- b. Events, trade shows, private shows
- c. Emails
- d. Audio,
- e. Video,
- f. Hoardings, Public Display,
- g. Call, SMS,
- h. Social Media,
- i. Show flat / model house

**Further each state has notified the guidelines for advertisement, accordingly, following are as per Karnataka RERA –**

- a. RERA Karnataka has issued a circular dated 14/11/2019 regarding the release of advertisements in print and electronic media.
- b. No disclaimer clause should be mentioned stating the information is subject to change etc
- c. KRERA Registration number should be mentioned in the display board at the project site.
- d. Advertisement of any real estate projects in the print media, hoarding or any other visual medium shall mention the registration number issued by the RERA authority on the top right corner of the advertisement.
- e. The RERA Registration shall be prominently visible.
- f. The length and breadth of the “RERA REGISTERED” information must not be less than 10% of the length and breadth (whichever is higher) of the advertisement issued in print media.
- g. In an advertisement on radio or through electronic media and SMS, the registration number issued by the authority shall be prominently pronounced/published.
- h. If the completion certificate for the real estate project was applied before 11/07/2017 has been obtained, the same shall be mentioned in the advertisement.

- i. K-RERA Registration number should be mentioned in the display board at the project site of the Promoters.
- k. agents should adhere to the above points while releasing advertisements. Further if the advertisement is by the Agents, Agent RERA Registration shall also be mentioned.

**2(c)"agreement for sale" means an agreement entered into between the promoter and the allottee;**

1. The format of Such Agreement for sale is as notified under the Rules notified by the appropriate government. Most of the States have notified the form of Agreements for Sale.
2. Karnataka State has notified the Agreement for Sale on 12-06-2020 under The Karnataka Real Estate (Regulation and Development) (Agreement of sale) 2020 Rules while also inserting Rule 8 A.
3. It is mandatory for the all the promoters of the Real Estate project to follow such format and contents as notified under the Rules
4. Any addition or deletion in the Agreement for sale shall be in compliance with the provisions of the Act and Rules.
5. Any modification in the sale agreement by the promoter shall not result in affecting the rights of the allottees / buyers.
6. The Agreement for sale is the primary document between the allottees and promoters in case of any difference of opinion or disputes or in case either party seeks legal remedy. Hence it is an important document which should be drafted carefully and professionally
7. Any application, letter of allotment, letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the Agreement for Sale or under the Act.”

- 8 The Act and Rules mandates the promoter shall submit the draft copy of Agreement of Sale along with the Registration Application. Further all the state authorities are insisting as part of the regulation function and to enable the intending buyer to aware of the clauses provided in the Agreement of Sale
9. The Authorities directing the promoters to modify/ alter/ delete/remove the clauses which is unfair, one-sided agreement of sale, puts the allottee in a inferior position etc
- 10 Karnataka RERA has mentioned the below condition as part of the Registration Certificate of the project in Form C –

**2. This registration is granted subject to the following conditions, namely :-**

i. The promoter shall enter into an agreement for sale with the allottees as provided in rule 8A of the Karnataka Real Estate ( Regulation & Development ) Rules, 2017 and comply with the section 13 of the Act:

Any clauses in the AOS/Possession letter/ Allotment letter that is not in accordance with the

Act/ Rules/ Regulations are void ab initio:

*To conclude Agreement for sale is a Standardized/ Uniform contract document – across Real Estate Industry/ business – minimal scope for modification.*

*Read more at: <https://taxguru.in/corporate-law/rera-agreement-sale-standardized-uniform-contract-document.html>*

Builders in India must mention the “**non-negotiable**” clauses at the time of providing agreement to sale, the Maharashtra Real Estate Regulatory Authority (RERA) has ruled. The state authority issued a notification in this regard on December 13, 2022. Modification in non-negotiable clauses defeats the very objective of the modal agreement to sale, the authority added

**2(d)"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;**

Throughout the Act, Rules reference to intending purchaser or owner of the Plot or Apartment is referred to as an Allottee (words like purchaser, buyer, consumer have not been used). It is also important to note that a person who subsequently acquires the Plot or Apartment by way of transfer or assignment is also included in the definition of an Allottee.

Is Investor an Allottee ?

In many instances the Promoter enters into arrangement with the investors (who invest money in the project and in lieu of investment, he/she/it is allotted apartment/s at a discounted price. If so, is he/she/it also an Allottee in the Project?

**Ans** - If a plot or an apartment is allotted and/or an Agreement of Sale has been executed, depending on the clauses in the agreement and if the agreement is the same as any other agreement albeit with a price discount, then such an investor shall be deemed to be an Allottee. Such an investor will have recourse to all remedies under the Act that are available to an Allottee.

If the agreement contains clauses in the nature of investment and return on investment clauses etc., without there being any intention to actually own the plot or an Apartment, then he/she/it would be deemed to be an investor rather than the allottee. As his/her/it's intention is to earn profit rather than to own a plot or an apartment in the project.

*Maharashtra RERA has issued a circular stating investors may be treated as Promoters also.*

*The interim Real Estate Tribunal - Karnataka has held in one case that persons who do not intend to remain in the project are Investors and not Allottees.*

In this month, I have explained the definitions of Adjudicating officer, Advertisement, Agreement for sale and Allottee. Remaining definitions would be deliberated in the subsequent months.

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# POWER OF COMMITMENT



CA. Rajat Rashmi

**C**ommitments are the bread and butter of a professional. Our work needs deep commitment, of Time, Effort and Quality. We are intuitively aware of these, whether we deliver them everytime or not.

I must clarify, if you googled ‘commitment’, they are invariably about commitment towards your partner. Not your business partner, who together with you form the ‘&Co part of your firm’s name!!! This is about your romantic partner. It’s almost as if commitment is synonymous to giving something to someone you love.

And that made me question either of the two ideas of commitment: professional or relationship. Commitment is not a duty, it’s a virtue. Some are committed and some are not. Just like honesty is a virtue, some are honest and some are not. Virtues are inbuilt characters in people. Which means a committed person would be committed in all spheres and an uncommitted person will mess up in all spheres.

But that’s not true. We know people who are professionally committed and have messy relationships and also the other way round. What is the reason for that? May be the question to ask here is: What are we committed towards? If we are primarily committed to financial gains, we will show our commitment towards financial gains only. In all other spheres we will remain uncommitted. This means we need to choose wisely, if we really need a wholesome life.

If we were committed to a wholesome life the design of our lives would alter. I remember being a person committed to career and financial success, once. I would focus on self development only if it served that purpose, else I did not mind if I was a crazy virago. And it did not last long. Soon life caught up with me and led me to a series of failures, which forced me to keep shifting my commitments. Till I finally arrived at my answers, through the circuitous journey of my life. The interminable maze of silly choices!

We all understand the demands on us. An average person will have a demand of commitment towards:

Work  
Health  
Family and  
Society

Since they look like way too many, we pick and choose our commitments. But they are all important. What can we do to deliver them all? That’s the magic question. And believe it or not there is a magic answer too. Commit to building a wholesome life. This would naturally direct us to ask for a happy and dynamic professional life, great health, happy family and also delivering our duties towards the larger society.

Research shows that the three most coveted objectives of all humans are Money, Health and Happy Relationships (Relationships both Family and Social). These are also the commitments we are called upon for. See? It all adds up.

Since we fail to get our commitments right, this is how we often do ‘life’: We break our commitments into stages: first career, then family, then maybe.... health and we forget the rest-of-the-world. Here’s how:

**Commitment to career, or more precisely, building our money earning capacity:** in early life it is 100%. This is the time when we struggle to make a meaning out of our lives. And many of you will agree that these are also the happiest years of our lives. Some of our fondest memories come from that time. If truth be told, the struggle should never end. There is no end to what we can do with our careers. Yet we are made to believe right from childhood, that when we grow up, we can have an oversized ego, no care in the world, loads of money and fancy lifestyles. Yes, we get those things. And they are a result of commitment of many years.

Very few have the capacity or the clarity to struggle for more. A large percentage of the young-successful, slowly buy into the idea of chilling. They begin a slow descent into inertia and old age. Old age is merely an

administrative term to encourage retirement from jobs, because there is a shortage of jobs in the system. In truth we are just as old as our age, that's that. Struggle is part of the fun. It is the real thing. The thrill in the journey.

**Commitment to relationships:** If we understood that relationships are like careers and need constant struggle to keep them prospering; we will never be at loss of love and affection. But most of us are in the red when it comes to love and affection. We all feel we give more than we get. Question is, who exactly is getting more? Answer... No one. Neither are we giving nor is anyone getting. How?

Affection by nature is fulfilling to the giver. So technically, if we were giving enough, we would not feel uncared for. Because we would become the hive of happiness by giving affection. So we can conclude that we are only asking! This aspect would take loads of exploring, but you get the logic, don't you?

**Commitment to health:** This is a no brainer. In today's world we assume that lifestyle diseases are inevitable which simply means we don't give a damn to our health. Because all lifestyle diseases can not only be avoided, many of them can even be cured with lifestyle changes. Yet we keep killing ourselves with diabetes, heart attack, kidney failure, high blood pressure, cancer. All diseases caused by a disorderly lifestyle and overdependence on our over the top healthcare system. I know people who would eat unhealthy food and then pop a pill to suppress the impact!

If we have an unbalanced commitment it's like a pool party in a stinky pool, where we kill an army of mosquitoes with bare hands, one-at-a-time, to save ourselves from dengue and malaria. The mosquitoes are having the feast. We are only getting sick.

**What does commitment to a wholesome life look like?** Steeped in dreams, punctuated with successes. It is full of happiness, love and affection in relationships. It is vibrant with health and vitality regardless of age. Haven't you seen people who never age? The secret is not in their genes, it is in their commitment towards a fulfilled life.

Some years ago, a couple of years before COVID, I witnessed the loss of members of my family in quick succession due to poor health. I grieved for years. And I learned that if I have to live, I better live in good health. I cannot give grief to my loved ones. My commitment transformed into healthy diet, healthy relationships and a healthy career choices.

I am not challenging life as it comes. Life will happen. Whatever the vagary of life-as-it-comes, I hope for my commitment to pick me up and get me back on track. If not, I would question my commitment.

Are you asking, 'is such a commitment possible?' Remember, when doctors diagnose people with unwelcome diseases, they do not hesitate to change their lifestyles. Challenge is that we assume our short lives to be 'forever lives'. And we introduce unpleasant thoughts, toxic relationships and unhealthy food into it.

Instead let us remember that life is temporary and commit ourselves to Health, Happiness and Prosperity. Let's commit to wholesome living. Happy Deepawali!

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# Ethics from Epics - 3



## Wisdom springs from the bed of arrows

CA. Allama Prabhu M S

### Part - 1

#### The last leaf of Kurukshetra..

In the final duel, Bheema strikes Duryodhana's thigh (the upper section) and smashes it with his mace massively. Duryodhana collapses to the ground; although he's not dead but he's as good as dead. Duryodhana was defeated and the war was eventually won by Pandavas.

Ashwathama was a fireball !

Unable to accept the death of his father consequent to a deceptive and deceitful narrative of Yudhishtira, sought vengeance on the Pandavas, Dhrishtadyumna in particular.

That night, he meets Duryodhana, the defeated king, and assures him to slaughter the Pandavas.

Duryodhana never paid heed to the wise because he was a victim of the poisons of jealousy and hatred.

He simply heard the words that pleased his prejudiced thinking & ignored all other advices.

Shakuni in veins, Vidhura in vain; failing to distinguish between vice and virtue or to choose goodness over sin....even while dying.

Pleased by the words of Ashwathama, Duryodhana proclaims him as the commander of his army, despite the fact that he has lost the fight and has no authority to do so.

Perhaps Kripacharya was also clouded by his emotions for Drona, his brother-in-law, who was unethically killed in the War.

Kripa joins with Ashwathama in supporting the midnight massacre, resulting in the slaughter of Dhrishtadyumna and the 5 Upapandavas (mistaking them as Pandava's).

Attacking the enemy while they were asleep was the prompted reaction to the killing of Drona.

And, like Bhisma and Drona, Kripa was also a mute spectator at Sabha Parva, witnessing the disrobement.

He who was granted immortality because of his exceptional virtues, such as righteousness, failed to act righteously twice.

At the end, Ashwathama gets cursed by Krishna for his perverse and heinous conduct of diverting the Brahmastra towards womb of Uttara (wife of Abhimanyu), intending to terminate the lineage of Pandavas.

Krishna revives Uttara's stillborn baby and resurrects the Kuru dynasty's lone lineage, Parikshith.

In my article "Ashwathama Hathaha, Kunjaraha" (KSCAA News bulletin, October 2012), Jnanasagar CA. S Krishna Swamy says in his unique style:

*"A seeming breach of ethics under certain circumstances may be to achieve a higher real ethical purpose. A guilty cannot have defence against a breach of ethics. Drona had done or participated or instigated a higher crime and that's why probably Krishna felt that he deserves what he got."*

He continued and said:

"I remember a quote of Ruysbroeck stated in Sri.S.Radha Krishnan's Bhagavad gita which goes as:

*'He only is fit to contemplate the divine light who is the slave to nothing, not even to his virtues'. A lesser crime to prevent a larger crime can be exonerated.'..*



### **Yudhishtira's guilt, regrets & laments**

Soon after the war, Yudhishtira becomes extremely sensitive and suffers from guilt consciousness as a result of the deaths of his several hundred cousins and relatives, as well as a big number of army personnel (18 Akshohinis).

Death of Karna and Drona were haunting him. The fact that Bhishma was in terrible agony was something he could not accept.

It was a herculean task for Krishna, Vyasa, Vidhura and others to mollify him and to persuade him that he was not the cause of the calamity.

After several days of soothing and counselling, he attained normalcy of mind. Everyone was greatly relieved when he consented to be crowned.

On an auspicious day, Yudhishtira was crowned as the Kuru Monarch.

### **Yudhishtira's unquenchable longing for knowledge**

Recognizing one's ignorance is the first step toward learning.

Yuval Noah Harari in his book "*Sapiens – A brief History of humankind*" has stated:

"The willingness to admit ignorance has made modern science more dynamic, supple and inquisitive than any previous tradition of knowledge. This has hugely expanded our capacity to understand how the world works and our ability to invent new technologies..... Modern culture has nevertheless been willing to embrace ignorance to a much greater degree than has any previous culture."

His take on modern science is completely candid.

However, this viewpoint has already been practiced in our culture for several thousand years!

Yudhishtira - the sole winner of the *World's first Quiz Time - rapid fire session (Yaksha Prashna)*, (KSCAA Newsbulletin, September 2012) the person who had handled every matter with the utmost pragmatism, feels that he is still incomplete in many aspects; insufficient in knowledge, intellect and intelligence to lead his kingdom.

He sought Vyasa and asked him to teach him the proper etiquette's and conduct of a monarch, the virtues, and teach him about royal duties. But Vyasa told him that he was asking the incorrect person, someone who had never ruled and had nothing to do with the earthly kingdom, and suggested that Bhishma was the greatest expert on these subjects and would be the best person to advise him and guide him in the right path.

Vyasa's suggestion was appealing to him. When he discussed this matter with Krishna, the latter replied that Bhishma was already nearing the end of his life and that he was even thinking about reaching out to him.

They all met Bhishma who was in excruciating pain. Krishna briefly summarized the scenario and asked him that his immense knowledge should not go waste with him and he has to necessarily share it with Yudhishtira.

Bhishma smiled and thanked Krishna for granting him an opportunity, even though he is the eternal source of knowledge and wisdom.

It was at this very moment Bhishma was granted a boon from Krishna, who took away his physical suffering and weakness and cleared his foggy memory.

With great humility, Yudhishtira started posing queries and casting doubts.

The spring of knowledge starts to pour from that point onward.

The knowledge interface covers a wide range of topics, including the king's duties and virtues, the appointment of royal priests, the qualifications of lawmakers and counsellors, army commanders, protection of the kingdom, tax collection, information about battlegrounds and warfare, the causes of happiness and misery, the duties of subjects, spiritual illumination, and methods of achieving enlightenment.

The conversation also includes the topics on VALUE OF WEALTH and the VALUE OF KNOWLEDGE!

*(Contd. in next issue)*

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## KSCAA - LEGAL CELL

### STRIDE TOWARD LEGAL SUPPORT

The robust confidence stakeholders place in the CA profession primarily stems from the rigorous Code of Ethics established for members' behaviour and its effective enforcement.

In recent times, we have seen numerous cases where members have been held accountable and found guilty of both known and unknown mistakes, and sometimes, client's mischief poses a challenge for Chartered Accountants.

In difficult situations, some CAs may respond independently without seeking expert help when they are emotionally distressed. Providing an inappropriate response can, at times, be detrimental to their situation. Some of them choose not to disclose the real issue, fearing it might expose them to risk and harm their professional reputation. This leads to adverse consequences in the later stages of the legal proceedings.

To assist members during challenging times, for the first time in the history of KSCAA, a Legal Cell is being established, comprising two Legal advisors, CA. R G Rajan, having more than 2 decades of hands-on experience in handling Disciplinary cases with ICAI, and Lt.Cdr. Avinash Sabarad (Retd), a practicing Advocate.

This cell will offer members free guidance when their cases are filed with the ICAI Disciplinary Committee. This service does not apply to cases concerning NFRA. The Legal Advisor will provide guidance on the approach to be followed within the regulatory requirements of ICAI. The members are requested to reach out to KSCAA office bearers for any additional information regarding this.



**CA. R. G. Rajan**



**Lt. Cdr. Avinash Sabarad  
(Retd), Advocate**

# UPCOMING EVENTS



**KARNATAKA STATE  
CHARTERED ACCOUNTANTS ASSOCIATION**



## 2 Days Residential Course -RERA Enabler Program

Organized by  
Corporate & Allied Laws Committee of KSCAA

**Key Takeaways:**

- Acquiring practical understanding on RERA Act 2016 and Karnataka RERA Rules 2017
- You can plan and start advise on RERA Registration and CA Certifications to the promoters
- Professional Opportunities under RERA
- Sessions by Eminent speakers

**DATE: 15.12.2023 & 16.12.2023**

**VENUE: Ramee Guestline Hotel, KIADB Industrial Area Attibele, Bengaluru**

Early bird closes on : 15th Nov. 2023 – Rs.7,500/-+ GST  
Last date for Registration : 30th Nov. 2023 – Rs.9,000/- + GST

Fee includes – Stay on twin sharing basis with vegetarian food  
Number of seats : Limited to 60 (first cum first serve basis)  
Reporting Time : 10 AM at the venue

Further details of the course would be shared to the registered participants.



CA. Sujatha G, President, KSCAA  
CA. Naveen S Hegde - Chairman

CA. Sunil Bhandary, Secretary, KSCAA  
CA. Shareesh Gadde - Convenor

For enquiry contact: +91 96208 98670

Register @ [www.kscaa.com](http://www.kscaa.com)

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  Karnataka State Chartered Accountants Association
  kscaa.com

## Solution to Sudoku - 38 October - 2023

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

## SUDOKU-39

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





Webinar on Succession Planning titled - Succession Planning – Lets all successfully pass the baton!  
Organized by the Women Empowerment Committee of KSCAA on 20<sup>th</sup> October 2023



Webinar on Transfer Pricing titled - Steering through the recent trends on Transfer Pricing  
Organized by the Direct Tax Committee of KSCAA on 17<sup>th</sup> October 2023



Eloquent Professional Meetings on Saturdays at the KSCAA Office



Trip to Galibore Nature Camp | Organized by the Leadership and Skill Development Committee of KSCAA on 5<sup>th</sup> November 2023



**BOMBAY CHARTERED  
ACCOUNTANTS' SOCIETY**

# Reimagine



4<sup>th</sup> - 6<sup>th</sup> January 2024



Jio World Convention Centre,  
BKC, Mumbai

**Entertainment  
Programme on  
5th January,  
2024**



Scan For Registration



reimagine.bcasonline.org

## MEGA CONFERENCE – CELEBRATING 75 YEARS

On 6th July, 2023 BCAS entered its 75th year in the service to the community of Chartered Accountants and the Society at large.

To celebrate this landmark year, several events and initiatives have been planned throughout the year. The jewel in the crown will be the grand 3-Day Mega event on Reimagining the Profession which will be held at the prestigious **Jio World Convention Centre, BKC, Mumbai, from 4<sup>th</sup> January 2024 to 6<sup>th</sup> January 2024**

This Conference is open to Members of BCAS, Non Members, as well as other professionals and businessmen. CA's below 30 years of age can enrol at confessional rate (Refer BCAS website for details)

Details of the Conference are as under:-

TOPICS	THOUGHT LEADERS
ReImagine India - Key note address	Eminent Thought Leader
One Giant Leap - Start-ups - Importance of Professionals in Start up Journey	Startup Founders/ Venture Catalyst/ Investor
Use of Technology & AI - Direct and Indirect Taxes	CA Pinakin Desai / Mr. Nishith Desai
Digital Infrastructure - A Game Changer Fire side chat on how technology is reshaping the profession	Mr. Dilip Asbe / Mr. Deepak Sharma Eminent Thought Leader CA Ninad Karpe - Moderator
The Future of Audit Profession - Technology Revolution - Existential Threat or Game Changing Opportunity	CA Girish Paranjpe / CA P R Ramesh CA Akhilesh Tuteja
ReImagine the New Age Professional Firms	CA Jamil Khatri
One World - One Tax (Vasudhaiva Kutumbakam)	Mr. Philip Baker / Mr. Pascal Saint Amans CA Gautam Doshi Adv. Mukesh Butani - Moderator
The Victorious - A Model for Leadership	Eminent Thought Leader
New Age Economic Wars - Future of the World Role of Professional - Currency War, Cyber War, Tech War, Economic War, etc.	Shri Sanjeev Sanyal*
Ride the Capital Market - Take the Bull by its Horns	CA Nilesh Shah / CA Ramdeo Agarwal CA Utpal Sheth Mr. Mangalam Maloo - Moderator
Changing Corporate Landscape - Professional Opportunities	CA Raj Mullick / Mr. Satyam Kumar Eminent Thought Leader
Interchanging Role - Reimagining One's Comfort Zone CA to Nation Building   CFO to Practice   Practice to CFO	Padma Shri TN Manoharan CA Milind Sarwate CA Charanjeet Attra





# Miles has now **cracked the puzzle** for **Indian Chartered Accountants** to **work in the US for 3 years!**



## Why the Miles US Pathway

There's a huge shortage of accountants in the US.



## What's in it for you

- Starting salary in the US of **\$60,000+** (₹ 50 lakh+)
- Executive Alumni Status of IIM Indore
- Masters from top US Universities
- 3 years of work experience with top US public accounting firms
- Setting up your own off-shoring practice in India

## How did Miles crack the puzzle

- Indian engineers do B.Tech in India
- Pursue MS in Computer Science (STEM) from a US university for 1 year
- Get a 3-year work permit after completing the STEM program

\*STEM stands for Science, Technology, Engineering, Maths

Miles has worked with US universities to convert the MS Accounting into STEM by adding business analytics into the curriculum. So it becomes **MS Accounting with Analytics** – a **STEM program** – which now allows accountants the same 3 year work permit like engineers.

## Top recruiters in the US



and many more

Contact us: **CA Apoorva Agarwal** - apoorva.agarwal@mileseducation.com | [usp.mileseducation.com](http://usp.mileseducation.com)

Advt