THE CHARTERED ACCOUNTANTS STUDY CIRCLE

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INDEX

Subject	Author	Page No.
Recent Judgments in VAT CST GST	CA. V.V. Sampathkumar	6
Case Laws - GST / Service Tax	CA. Vijay Anand	12
Electronic Invoicing concept under GST	CA. Debasis Nayak	27
A Discussion Paper on Chapter III - Direct Taxes of Finance (No.2) Act, - 2019	CA. V. Vivek Rajan	32
Excel Tips	CA Dungar Chand U Jain	39
News Re-Collect	CA P. Ramasamy	45

MEETINGS

Date	Time	Speaker	Topic
14.12.2019 Saturday	09.00 am*	Adv. Sudarhshan Rangan	Recent Developments in International Taxation
28.12.2019 Saturday	06.30 pm**	2nd Meeting Speaker - To be announced later	Special Meeting Combined with Annual Day Celebrations

*Preceded with Breakfast half an hour before the scheduled time of meeting

** Preceded with High Tea half an hour before the scheduled time of meeting

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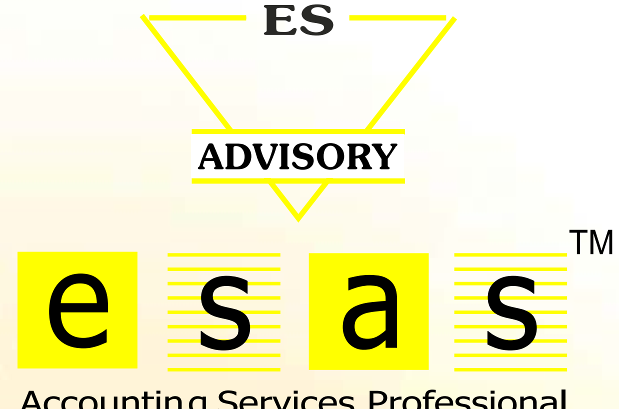

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EDITORIAL

Dear Colleagues

Hello!

We use *"hello"* several times a day to greet people or attract attention. *"Hello"* came into existence in the mid-1800s. It is an alteration of *hallo*, which was an alteration of *holla* or *hollo*. These words were used to attract immediate attention and demand that the listener come to a stop or cease what he or she was doing. *"Hello"* gained widespread usage though the increased use of the telephone. Alexander Graham Bell had originally suggested the telephone greeting *"ahoy"*. But the greeting that stuck was *"hello"*, which may have been suggested by Thomas Edison.

Now, on to serious professional matters, I have penned something below that seeks your attention. Give it an independent thought and then a collective intellectual thought by making it a topic of discussion at group meetings for the betterment of the profession.

"People talk of the Big 4 accounting firms. Sadly, there is no Indian firm there. By 2022, let us have a Big 8, where four firms are Indian," Modi said on ICAI's Foundation Day a few years ago.

After the Big Four, there are a handful of global and Indian auditing firms, which have the size, scale and wherewithal to compete at a national scale. After the top 15-20 firms, the market peters out — the smaller firms are localised.

According to a report published in the recent past by Prime Research, 72% of the auditing firms in India are small or sole players (less than five partners) and just 152 firms had more than 10 partners.

Over the time, multiple attempts had been made to consolidate and build auditing firms of scale but almost all ended in a failure. Issues related to brand name, profit share, control and ego clashes cropped up each time. One of the reasons attributed to the failure was instead of building an institution, most promoters were only interested in their share of money.

Smaller firms also did not have any motivation to grow big. With a heavily article-dependent model, small firm owners were/are making much more than partners of cost-heavy bigger firms.

Thinking Aloud, the Question is 'Is there any ways and means of upgrading the capabilities, performance and deliverance of small firms?'

Professionals in cities and towns, who are well networked, have the facility of referring to each other and resolving issues by mutual exchange of information. Others who are new to the profession or who are not well net-worked are at a disadvantage.

Small firms do not have the where-with-all to invest and to employ qualified professional(s) or semi-qualified professional(s) who can be dedicated to gathering knowledge, updates, judicial decisions, standardising formats, raising alarms on timelines to be adhered to, Client education from time-to-time and sourcing current happenings in India and abroad on the accounting/auditing fraternity.

Neither, do we have the support of an 'Organisation' or a 'Knowledge Portal' or a 'Knowledge Desk' or something similar to it which can serve as a 'Ready Referencer' to practicing professionals.

If at all we have such a Back-up system that can educate and support the Front End of the Firms - Professionals, Articled Clerks and Others working at the Clients' place of work – there can be nothing like it. The level of confidence, the quality of the work, the timely deliverance of qualitative analytical reports, etc., will fall in place.

Now lets' come to the Question of where and how do we a find a possible Solution to filling this Gap. Any Out-of-the-Box idea, when originated, will appear to be Utopian. For whatever it is worth, lets dwell on it for a few moments.

What if an Association like ours **or** a Group of Firms join together **or** a Company is formed with equity participation **or** a Mutual Benefit Society is formed with the specific purpose of serving as a 'Knowledge Bank' and has as its sole purpose 'knowledge gathering and dissemination' and has a formal set-up which employs professionals, semi-qualified and other support-staff. All professionals who become members of this Set-Up by paying a Life-Time or Annual fee will be able to source their requirements as and when the need arises.

Therefore Colleagues, lets' join together and make an attempt at Crystallizing our Vision to Empower Ourselves, as we march towards taking the Competition by its Horns!

Wishing You all Happy Christmas and a very Happy & Prosperous New Year 2020!

Best Regards

P.Ramasamy

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

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RECENT JUDGMENTS IN VAT CST GST

CA. V.V. SAMPATHKUMAR

Advance Rulings: The application made for advance ruling was rejected stating that it was not within the purview of the Committee. Whether such rejection can be made without providing an opportunity of personal hearing is the question which is answered by the proviso to Section 48A of the Tamil Nadu VAT Act, 2006, wherein it is contemplated that no application shall be rejected under the said provision without giving the applicant reasonable opportunity of being heard. Though the learned Special Government Pleader sought to contend that the application of the petitioner was not rejected and on the other hand, the respondent has clarified the rate of tax payable for waste cement bags pulp, in view of the specific reason rendered by the committee at paragraph No.4.2 of the order, this Court is of the view that it is also an order of rejection of the petitioner's application and therefore, such order should have been made only after providing an opportunity of personal hearing as contemplated under Section 48A. Accordingly the Court remitted the matter back to the respondent for reconsidering the matter afresh on merits and in accordance with law after giving an opportunity of hearing to the petitioner without expressing any view on the merits of the observation made by the respondent. **M/s.V.L.S.Fibre Vs. Authority for Clarification and Advance Ruling, Chennai-600 005.W.P.No.16792 of 2019 Dated: 18.09.2019**

Personal hearing: The order of assessment was passed in the absence of any reply filed by the petitioner. There is no dispute to the fact that the petitioner sought for third party documents, which are relied on by the Assessing Officer. It is also not in dispute that those documents were not furnished to the petitioner so far. Needless to say that the petitioner will be in a position to furnish an effective reply, when those documents are furnished to them. The learned counsel for the petitioner submitted that on two occasions, the petitioner could not appear, because the authorized representative of the petitioner was not in station at that time. He further submitted that in respect of all other occasions, though the petitioner appeared before the respondent, he was asked to wait outside

the office for the whole day and however, he was not provided with the copies of the documents sought for. Counter affidavit is filed by the respondent, in which, it is stated that though the petitioner was provided with an opportunity of personal hearing for more than one occasion, they have not utilized the same. It is also specifically stated that the petitioner was called upon to appear in person at the office of the respondent to get the copies of the documents required by them and however, the petitioner did not utilize such opportunity. Considering all the above, the Court has remitted the matter back to the Assessing Officer with specific directions to redo the assessment once again after furnishing those documents to the petitioner. **Tvl.Anuj Traders vs. The Assistant Commissioner (ST) Shevapet (North) Assessment Circle W.P.No.6717 of 2019 DATED: 18.09.2019**

Penalty: The issue involved in the impugned order of assessment is mismatch issue. The AO, after issuing notice of proposal, passed the impugned order by imposing tax as well as penalty @ 150%. The petitioner, though paid the tax amount has however, questioned the imposition of penalty of mainly by contending that the AO has not provided an opportunity of personal hearing to the petitioner before imposition of such penalty. Considering the fact that the petitioner has already paid the tax liability and is aggrieved only against the imposition of penalty by contending that there is no wilful suppression, this Court without expressing any opinion is of the view that one more opportunity can be provided to the petitioner by the AO to consider as to whether the imposition of penalty is required in this matter or not. **M/s.National Tyre Re-treading vs. The State Tax Officer, Vandavasi W.P.No.27349 of 2019 DATED: 16.09.2019**

Assessment: In an assessment process, (a) On receipt of the notice of proposal, the assessee has to file the objections. (b) On considering the objections, (i) the assessing officer may drop the proposals either wholly or partly or (ii) may confirm the proposals either in part or whole. (c) The above events, thus, should take place only on application of mind on the objections so filed. (d) After considering the objections, if the assessing officer intends/decides to drop the proposal as a whole, there is no need for personal hearing. (e) On the other hand, if the assessing officer intends/ decides to confirm the proposal either in part or whole, then he should invite the assessee for personal hearing. Stating so, the Court concluded that when an order of assessment is passed u/s 22(4) of the TNVAT Act 2006, the assessee has right to be heard in person. In this case, it has not been done. The personal hearing should be given only after filing the reply

to the notice of proposal. Therefore, informing the assessee in the notice of proposal itself to appear for personal hearing along with reply cannot be construed as an effective personal hearing. **T.M.Natarajan & Company Vs. The Assistant Commissioner, Pollachi Rural Assessment Circle - 642 001 W.P.Nos.7905, 7918 & 7924 of 2019 Dated: 13.09.2019**

Time sought for reply: In these cases, the Assessee has sought for time to file their objection through their letter dated 15.03.2019. Such communication was also received by the Assessing Officer, as found in the impugned order itself. If that be the case, the Assessing Officer is not justified in proceeding to pass the assessment orders without informing the assessee as to whether their request for time to submit their reply has been accepted or rejected. In both events, the Assessing Officer is bound to send a communication to the Assessee and inform the result of the request made by the Assessee. Therefore, in the absence of any such communication from the Assessing Officer, there is a possibility of drawing a reasonable presumption by the assessee exists, as if their request has been accepted. Therefore, the act of the Assessing Officer in not passing any order on the request of the petitioner seeking for time and proceeding to pass the orders of assessment straightway, amounts to violation of principles of natural justice. Admittedly, the orders of assessment were passed simply by confirming the proposals in the absence of any objection from the petitioner. Therefore, this Court is of the view that the matter needs to go back to the Assessing Officer to redo the assessment once again on merits and in accordance with law after getting objection from the petitioner. **Delphi TVS Technologies Limited, Vs. The Assistant Commissioner (ST), (BYA), Anna Salai Assessment Circle, Chennai 600 006. W.P.Nos.11757, 11765, 11769, 11774 and 11777 of 2019 Dated 09.09.2019**

Input Tax Credit: Section 19(14) of the Tamil Nadu Value Added Tax Act, 2006 (for brevity "TNVAT Act") provides that where the business of a registered dealer is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business etc., the registered dealer shall be entitled to transfer the input tax credit lying unutilized to such merger, amalgamated or transferred concern. But the application for the transfer or input tax credit from the transferor company to the transferee company has not taken place as no orders were passed by the AO, in a writ petition by the petitioner, the Court directed the respondent to consider the application filed in this regard by the petitioner on 01.08.2013 and pass orders

on the same on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. **Orix Auto Infrastructure Services Ltd., vs. The Assistant Commissioner (CT) Royapettah Assessment Circle Chennai W.P.No.26792 of 2019 DATED: 06.09.2019**

Export oriented units: Claim for the refund of input tax credit relating to the supply made to 100% export oriented units situated inside the SEZ was preferred with various document and judicial decisions by the petitioner. The claim was rejected without a proper speaking order except simply observing that the decision relied on by the petitioner/Assessee are not applicable to them. Except stating so, the respondent has not adverted to any of the contentions raised by the Assessee in their reply. Therefore, it is apparent that the orders impugned in these writ petitions are not speaking orders with reasons and findings and on the other hand, the respondent seems to have confirmed the proposal, simply by stating that the case laws relied on by the Assessee are not applicable. Stating so, the Writ Petitions are allowed and the impugned orders are set aside. The matter is remitted back to the respondent for passing fresh orders on merits and in accordance with law with reasons and findings. Such exercise shall be done by the respondent within a period of six weeks from the date of receipt of a copy of this order. **M/s.R.R.K.Alloys vs. The Assistant Commissioner (ST) Avinashi Circle Coimbatore. W.P.Nos.25042, 25045 & 25046 of 2019 DATED: 05.09.2019**

Limitation: The Assessing Officer sought to revise the assessment in respect of the relevant assessment years 2008-09, 2009-10 & 2010-11, to which, the deemed assessment has already been taken place and completed on 30.06.2012. Therefore, if the Assessing Officer intends to revise the assessment based on a reason that the turnover has escaped assessment or that the assessee has wrongly availed the Input Tax Credit, he ought to have proceeded within the time (i.e., on or before 30.06.2018) prescribed under the above said provision of law, namely section 27 of the Tamil Nadu VAT Act. In this case, admittedly notice of revision itself was issued on 03.09.2018, beyond the period of six years. Conducting an inspection or collecting the tax on that day itself cannot be construed as the completion of the exercise of determination to the best of the assessing authorities judgment to the turn over which has escaped assessment and assessment of the tax payable by the assessee on such turnover. Owing to the meaning of the term "determine", the Court came to the conclusion that impugned assessment orders which are admittedly under Section 27(1)(a) of

TNVAT Act, are barred by limitation. **M/s.Chhotabhai Retailing India P.Ltd.,Vs. The Assistant Commissioner (ST) Nungambakkam Assessment Circle, W.P.Nos.31431, 31433, 31434 of 2018 Dated: 05.09.2019**

Remand directions: In the impugned order it was stated by the AO to the extent that, a notice was issued to the dealers calling for objections if any to the proposal and duly served on them on 14.08.2018. Even after sufficient time was given they have neither filed their objection or filed the declaration forms till date. Therefore the proposal is confirmed and order issued. Counsel for writ petitioner submitted that it is incorrect to say that the writ petitioner has not responded to the notice and submitted that Pre-Assessment notice dated 23.06.2014 bearing CST/697145/2006-07 was issued, calling upon the writ petitioner to send objections if any against the proposed assessment. To this, the writ petitioner responded on 03.11.2015 and the same has been duly received by the respondent namely Commercial Tax officer, Nungambakkam Assessment Circle, Chennai – 600 031. In the reply, it has pointed out that owing to heavy rain, there was water logging and there was some difficulty in producing the C Forms immediately. On this basis, sometime was sought. Considering that there was floods, deluge, disruption of normal life in November-December of 2015, this Court is inclined to set aside the impugned order and remanded the matter with directions. **Tvl. KJK Poly diamonds International (p) Ltd., Vs the Assistant Commissioner (CT), Nungambakkam Assessment Circle W.P.No. 8593 of 2019 DATED: 20.06.2019**

Freight Charges: Rule 8 (2) of TNVAT Rules 2006, specifically excludes the freight charges as post-sale charges which are separately charged in the invoices. The Division Bench of this Court, in a recent decision reported in 2019 (1) TMI 711 in the case of M/s. Larsen & Toubro Limited Vs. State of Tamil Nadu rep. by the Joint Commissioner (CT), had held that the cost of freight and delivery or cost of transportation cannot be included in the sale price, where they are separately charged and when the freight charges and pumping charges have been separately shown in the invoices without including the same in the cost of the goods, the tax cannot be levied on the same. **M/s.Technomax Building Solutions India (Pvt) Ltd., Coimbatore Vs Assistant Commissioner (CT), Thudiyalur Assessment Circle W.P.Nos.932 & 933 of 2013 DATED: 20.06.2019**

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CASE LAWS - GST / SERVICE TAX

CA. VIJAY ANAND

1. **GST–ADVANCE RULING–AMORTIZED COST OF TOOLS/DIES/MOULDS SUPPLIED FREE OF CHARGE ON RETURNABLE BASIS FROM BUYERS OF FINISHED GOODS MANUFACTURED BY THEM AND SUPPLY OF TRANSACTION VALUE – NOT TO BE INCLUDED**

   In RE: Toolcomp Systems P. Ltd., 2019 (29) G.S.T.L. 137 (A.A.R. - GST), the applicant is involved in the manufacture and sale of plastic moulds, press tools, Jigs/Fixtures/Gauges, Injection moulded parts and Design services, as per the specific orders & requirements of their customers. The Injection moulded parts (Tools), as per specific order from customer, are manufactured using plastic Granules as Raw material and using in-house injection moulding machines. The Tool is either manufactured by them or supplied by the customers free of cost, for production of 'parts', on returnable basis. In the instant case, the mould (Tool) has specific life and can produce only certain volume of total production. Every part produced has incurred a portion of the mould (Tool) cost that appears as Transaction value, if the Tool is provided by the Applicant. In the instant case, the customer is supplying the Tool on free of cost basis and hence the applicant is not charging any portion of the cost of the Tool to the customer.

   An application was filed seeking advance ruling as to the applicability of Tool Amortisation cost (Transaction Value) in GST Regime on Capital Goods received freely on returnable basis from the recipients (Customer) for parts production and supply. This reference particularly where the principal manufacturer provides moulds, dies, jigs and fixtures or tools to the supplier for use in manufacturing process.

The authority observed as under:

1. The tool is provided free of cost by Tata Autocomp Systems Ltd., and the applicant is bound to return the same to them after completion of the supply or as instructed. In other words the applicant is not under contract to supply components made by using the tools/moulds belonging to them but the same have been supplied by Tata Autocomp Systems Ltd., on FOC basis.

2. CBIC in its Circular No 47/21/2018-GST dated 08.06.2018 has clarified that Moulds and dies (Tools) owned by OEM that are provided to a component manufacturer on FOC basis do not constitute a supply as there is no consideration and in such cases, the value of goods provided on FOC basis shall not be added to the value of supply of components. However, in case the contractual obligation is cast upon the component manufacturer to provide moulds/dies but the same have been provided by the OEM on FOC basis, then the amortized cost of the moulds/dies is required to be added to the value of the components supplied.

3. The ruling is based on examination of the contract/purchase order furnished by the applicant in the case of their customer M/s Tata Autocomp Systems Ltd., (OEM) where the applicant is not under any obligation to use their own tools/moulds for manufacture of the components and the same are supplied to them free of cost and on returnable basis. This ruling will apply to other contracts entered into by the applicant if and only if the terms and conditions contained therein are the same as those contained in the contract placed before the ruling.

Hence, the authority ruled that the cost of the tool/s supplied by the OEM on FOC basis, under the situations, to the Applicant is not required to be added to the value of the parts supplied by the applicant and hence the said value is not liable for GST.

2. GST – REFUND OF IGST ON ZERO RATED SUPPLY – DENIED AS AT THE TIME OF EXPORT OF GOODS, THE APPELLANT HAD CLAIMED DRAWBACK ON FULL RATE INSTEAD OF CUSTOMS RATE – NOT TO BE SUSTAINED

In Amit Cotton Industries v. Principal Commissioner of Customs 2019 (29) G.S.T.L 200 (Guj.), the petitioner is engaged in a business of procuring raw cotton from farmers, ginning the same, pressing the same, carrying out necessary process, converting it into bales and then exporting these cotton bales out of India for which they paid GST, notwithstanding the fact that the same is a 'Zero Rate Supply' in accordance with Section 16 of the IGST Act. Rule 96 of the CGST Rules, 2017 provides that the shipping bill filed by an exporter of goods shall be deemed to be an application for refund of Integrated Tax paid on the goods exported out of India and such application shall deemed to have been filed only when the person in charge of conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export and the applicant has furnished a valid return in Form – GSTR-3 or Form GSTR-3B.

Accordingly, the petitioner had for the purpose of exporting goods out of India issued Commercial Invoice, Export Invoice, Shipping Bills. Export General Manifest and Bill of Lading were also generated by the Shipping Line. Section 54 of CGST Act, 2017, read with Section 16 of IGST Act, 2017 obligate the respondent authorities to refund the IGST immediately after the goods are exported by considering the shipping bills as application for refund of IGST paid in regard to the export goods. In the instant case, notwithstanding the fact that the exports were made in July 2017. IGST was not refunded nor was any reason assigned for withholding the same.

The department had verbally informed the petitioner that the refund of IGST would not be sanctioned as the petitioner had claimed drawback @ 1% in regard to the exported goods and that if they (petitioner) would have claimed drawback @ 0.15% instead of 1%, their refund would have been sanctioned. In view of the fact that the petitioner was suffering from cash crunch and was in dire need of the refund amount, they have given away the balance drawback i.e. 0.85% (1% - 0.15%) along with interest notwithstanding the absence of legal sanctity for withholding the same.

Subsequently, on 16/10/2018, petitioner had also written a letter to the Deputy Commissioner of Customs, Drawback Section (Export), Mundra, and informed him regarding return of excess drawback claim under the aforesaid shipping bills by enclosing the copies of demand drafts under which the so-called excess drawback is paid back along with interest. Thereafter, in view of non response, the petitioner (vide letter dated 05/11/2018) informed the respondent No.1 about reversal of so-called excess drawback along with interest and it was once again requested that at least in light of the fact that the aforesaid amount of drawback was given away along with interest, the legally payable refund of IGST amount may kindly be credited to the concerned bank account of the petitioner in accordance with law.

On 5/11/2018, the petitioner received a mail from email i.d.mundraigst2018@gmail.com confirming that the only reason for withholding refund is that the petitioner had first claimed more rate of draw-back and this mail didn't deal with the fact that the said higher rate is given away/paid back by the petitioner. On a writ petition by the assessee, the high court observed as under:

1. Section 16 of the IGST Act, 2017, referred to above provides for zero rating of certain supplies, namely exports, and supplies made to the Special Economic Zone Unit or Special Economic Zone Developer and the manner of zero rating.

2. It is not in dispute that the goods in question are one of zero rated supplies. A registered person making zero rated supplies is eligible to claim refund under the options as provided in sub-clauses (a) and (b) to clause (3) of Section 16 referred to above.

3. Section 54 of the CGST Act, 2017, provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, shall make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined will have to be credited to the Fund referred to in Section 57 of the CGST Act, 2017.

4. Rule 96 of the CGST Rules provides for a deeming fiction. The shipping bill that the exporter of goods may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India. Section 54 referred to above should be read along with Rule 96 of the Rules. Rule 96(4) makes it abundantly clear that the claim for refund can be withheld only in two circumstances as provided in sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017.

5. Hence, the respondents have conceded that the case of the writ-applicant is not falling within sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. The stance of the department is that, as the writ-applicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writ-applicant is not entitled to seek the refund of the IGST paid in connection with the goods exported, i.e. 'zero rated supplies'.

6. If the claim of the writ-applicant is to be rejected only on the basis of the Circular No. 37/2018-Customs dated 09.10,2018, then the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law.

7. The circular upon which reliance has been placed by the revenue cannot be said to have any legal force as it runs contrary to the statutory rules, more particularly, Rule 96.

8. Rule 96 is relevant for two purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies :—

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of Section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

9. Apart from being merely in the form of instructions or guidance to the concerned department, the circular (a) is dated 9th October 2018, whereas the export took place on 27th July 2017 and (b) explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents.

Hence, the writ-application was allowed and the respondents were directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund.

3. <u>SERVICE TAX – COMMERCIAL TRAINING/COACHING SERVICE – CONDUCTING OF IELTS TESTS AND DECLARING RESULTS WITHOUT IMPARTING SKILL OR KNOWLEDGE OR LESSON ON ANY SUBJECT – NOT COVERED</u>

In IDP Education India Pvt. Ltd. v. CCE, Delhi-IV 2019 (29) G.S.T.L. 441 (Tri.-Del.), the appellant had entered into an agreement on 9 September, 2010 with IELTS, Australia whereby they have granted a license to the Appellant to operate the business of IELTS Test Centers from various locations in India. IELTS, which is called "International Standardized Test of English Language Proficiency" is widely accepted as a reliable means to determine whether a candidate can study in English medium language. The appellant conducts the test alone in India and students wishing to take the test pay Rs. 7,900/- to the appellant. Such a test was not a part of any taxable service during the relevant period i.e. April, 2012 to June, 2012 and, therefore, no service tax was paid by it. The adjudicating authority confirmed the demand on the same under "Commercial Training or Coaching Service", against which further appeal was filed before the Tribunal which observed as under:-

1. A perusal the relevant clauses of the agreement clearly show that the agreement is with regard to the holding of the IELTS Test by the appellant and that there is nothing in the agreement which may require the appellant to coach or train any candidate desires of appearing at the IELTS Test nor any consideration in terms of money is earmarked for this purpose.

2. There are two modules of IELTS Test, namely (a) Academic Module for test takers wishing to study at undergraduate or postgraduate levels, and for those seeking professional registration and (b) General Training Module for test takers wishing to migrate to an English-speaking country (Australia, Canada, New Zealand, UK), and for those wishing to train or study at below degree level.

3. What has to be determined is whether conduct of a test would amount to commercial training or coaching by a commercial training or coaching centre.

4. "Commercial training or coaching is necessarily to be provided by a "commercial training or coaching centre which centre has been defined to mean any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field. The holding of a test cannot by any stretch of imagination, be considered as imparting skill or knowledge or lessons on any subject or field.

5. The Department's contention that apart from holding the test, the appellant is also holding test/ seminars/classes for preparing students to appear at the test is not supported by the agreement.

6. Wr.t. the contention that the appellant's website as to the free availability of practice manual, (a) the same was not a part of any earlier Show Cause Notice and (b) the website does not indicate that it is the appellant that will be providing such activity. Merely because the website of the appellant informs the candidate that free support materials can be found on other sites cannot automatically lead to an inference that the appellant is providing such services. Likewise, the contents on the "face book" also do not convey that the appellant is providing such service. In any case, the appellant has not received any consideration for any of these alleged activities as is not only clear from the agreement but also from the receipts given to the students.

7. The SCN alleges that the appellant is providing training because the receipt raised by the Appellant mentions the name of the module as "General Training Module". This is a perverse inference because the name of the module is "General Training Module" and mere use of the word "training" in this test module does mean that some sort of "training is imparted by the appellant.

8. The adjudicating authority rejected the contention of the appellant that the fees paid by the students was for the conduct of the test for the sole reason

that out of the fees received from the students, Rs.3,600/- was paid to Australia Pty. Ltd. and Rs.2,438/- was paid to a sub-contractor and, therefore, the balance amount of Rs.550/- that was retained by the Appellant cannot be in connection with the holding of the test, since the test was outsourced to a sub-contractor.

9. The adjudicating authority failed to appreciate that if the appellant is required to conduct a test, then it has certainly to retain some amount for itself and it cannot be said that this amount of Rs.550/- that remains with the appellant is not for the activity of the holding of the test. To arrive at a conclusion that the appellant was conducting coaching or commercial training activity, it was imperative to have based conclusion on some positive evidence in this regard, rather than drawing such an inference.

10. The contention of the Department that the holding of the test is itself a skill and, therefore, the appellant is providing commercial training or coaching cannot also be accepted. No skill or knowledge is being provided to the candidates appearing at the test.

Hence, the appeal was allowed and the impugned order set aside.

4. SERVICE TAX – BUSINESS AUXILIARY SERVICES – WARRANTY CLAIM REPAIRS UNDERTAKEN BY OVERSEAS AUTHORISED REPAIRERS AND REIMBURSED BY OVERSEAS DISTRIBUTORS – REIMBURSEMENT BY INDIAN CAR MANUFACTURER TO THE OVERSEAS DISTRIBUTORS – NOT TAXABLE

In Hyundai Motor India Pvt. Ltd. v. C.C.Ex. & S.T, LTU, Chennai, 2019 (29) G.S.T.L. 452 (Tri.-Chennai), the appellants are engaged in the manufacture of motor vehicles and exported the same to their Overseas Distributors who are appointed by their holding company viz., M/s. Hyundai Motor Corporation (HMC), Korea. As per the agreements entered into between M/s. HMC, Korea and the Overseas Distributors, the Overseas Distributors are responsible for handling the warranty claims, monitoring of repairs and maintenance services and the establishment and monitoring of a network of Authorized Repairers for Hyundai cars. All warranty claim repairs are undertaken by the Authorized Repairers. The cost of such repairs are incurred by the Overseas Distributors and later reimbursed by the appellant. In the case of cars cleared for home consumption, the warranty claim services are rendered by the appellants

through their dealers to the car owners whereas in the case of cars exported it appeared that the Overseas Distributors rendered the warranty claim services on behalf of the appellant through the network of Authorized Repairers established and monitored by the Overseas Distributors. The adjudicating authority confirmed the demand under reverse charge mechanism (RCM) on the labour charges for services paid by the appellant to the Overseas Distributors. On appeal, the Tribunal observed as under:

1. A perusal of the agreements entered into between M/s. Hyundai Motor Corporation, Korea and the Overseas Distributors, the said Overseas Distributors are responsible for handling the warranty claims, monitoring of repair and maintenance services and the establishment of an entire network of Authorized Repairers for Hyundai cars. Thus, the appellant sells the cars to the Overseas Distributors who in turn sell it to the ultimate consumers.

2. All the cars have attached warranty conditions for repair and maintenance. The Overseas Distributors carry out the warranty claims through Authorized Repairers. The expenses incurred by the Authorized Repairers are paid by the Overseas Distributors. The appellant then reimburses the amount incurred by the Overseas Distributors.

3. The demand is raised on the labour charges for services paid by the appellant to the Overseas Distributors, under RCM. The appellant being the manufacturer is liable to oblige the warranty claim for which the amount is paid to Overseas Distributors who provide the repair services on behalf of the appellant.

4. While the SCN alleges that classification under 'Business Auxiliary Service' on account of the fact that the Overseas Distributors are providing service of warranty repairs on behalf of the appellant, the Order-in-Original (OIO) concludes that the provision of service on behalf of the client, including customer care services, are rendered by the Overseas Distributors and such activity also falls within the definition of Business Auxiliary Service.

5. The appellants have not paid incentives to the Overseas Distributors for sales promotion and marketing. The entire demand is on the amount paid by the appellant to the Overseas Distributors for the warranty claims. The adjudicating authority is of the opinion that when the Overseas Distributors establish the network of Authorized Repairers for carrying out the warranty claims on behalf of the manufacturer (appellant herein), the

said activity would be customer care service and also provision of service on behalf of the client. It needs to be said that though the Overseas Distributors may have carried out the repair and maintenance services and established the network of Authorized Repairers for the benefit of the manufacturer, the Overseas Distributors have not directly carried out any service to the customer.

6. However, when the Overseas Distributor is establishing the network of Authorized Repairers for carrying out the warranty responsibility of the appellant, indeed, this will satisfy 'customer care services' provided on behalf of the client contained in Sub-Clause (iii) of the definition of 'Business Auxiliary Service', and would be taxable.

7. Even if the Service Tax is paid as demanded by the Department, the appellant would be eligible to avail credit of the same. Thus, the situation is wholly a revenue neutral one. The extended period of limitation cannot be invoked alleging intention to evade payment of Service Tax when the entire transaction amounts to a revenue neutral situation, relying on the decisions in CCE, Chennai-IV Vs. M/s. Tenneco RC India Pvt. Ltd. reported in 2015 (323) E.L.T. 299 (Mad.) and M/s. Nirlon Ltd. Vs. CCE, Mumbai 2015 (320) E.L.T. 22 (S.C.).

8. Thus the demand for the extended period of limitation cannot sustain and requires to be set aside.

9. The adjudicating authority has relied on Rule 3 of the Place of Provision of Service Rules, 2012 (POPSR) which deals with place of provision of service generally. Rule 4 speaks about the place of provision of performance based services. The demand is only on the amount paid by appellant to Overseas Distributors for warranty repairs and maintenance.

10. Warranty claim for repair and maintenance of cars is a performance based service. As per Rule 4 of POPSR, when the goods are required to be physically made available by the recipient of service to the provider of service or to a person acting on behalf of the provider of service, in order to provide the service, the location where the service is actually performed is considered to be the place of provision of service. In the present case, the services of repair and maintenance are actually performed outside India.

11. Section 66A applies only where the service is received in India. In this case, the Business Auxiliary Service, viz., providing 'customer care service' on behalf of the appellant took place outside India. The same therefore cannot be taxable within India and hence, the demand post 01.07.2012 cannot sustain.

Hence, the Tribunal held as under:

(i) Demand beyond the normal period in cannot sustain; and

(ii) Demand post 01.07.2012 entirely cannot sustain.

5. SERVICE TAX – GTA TRANSPORTATION OF PALM OIL FRUITS – EXEMPTION UNDER NOTIFICATION NO.33/2004-ST – NOT TO BE DENIED HOLDING THAT THE FRUITS ARE NOT EDIBLE

In Nava Bharat Agro Products Ltd. v. C.C.Ex. & S.T, Guntur 2019 (29) G.S.T.L. 461 (Tri.-Hyd.), the appellants are the manufacturers of crude palm oil and are extracting oil from the fruits of palm trees and such palm oil fruits are the inputs. They are availing Goods Transport Agency services for getting the said inputs. The adjudicating authority confirmed the demand, under RCM, on the appellant against which further appeal was filed before the Tribunal which observed as under:-

1. The main issue to be adjudicated is whether palm oil fruit is a fruit entitled for the exemption of Notification No.33/2004-ST dated 03.12.2004. The notification is silent about any definition or the classification of fruit and all other products mentioned therein.

2. In Stroud's Judicial Dictionary of words and phrases it is clear that the term 'fruit', in legal acceptation, is not confined to the produce of those trees which in popular language are called fruit trees, but applies also to the produce of oak, elm and walnut trees.

3. Arising out of the above, any produce of a tree which is the result of ripened ovary, irrespective of nature of it being edible or not, amounts to fruit. The product transported in the present appeal is palm oil fruit. The photographs as produced by the appellant support this view.

4. Consequently, the fruit in question is very much covered by the notification. The adjudicating authorities have formed a very rigid and narrow description of the fruit.

Hence, the appeal was allowed and the impugned order set aside.

6. SERVICE TAX – CLUBS HAVING NO SHAREHOLDERS, DIVIDENDS DECLARATION AND DISTRIBUTION OF PROFITS NON TAXABILITY PRIOR TO 1.7.2012 – SAME POSITIO CONTINUES W.E.F.1.7.2012 UNDER THE NEGATIVE TAXES REJEME

In State of West Bengal v. Calcutta Club Limited 2019 (29) G.S.T.L. 545 (S.C), the Assistant Commissioner of Commercial Taxes issued a notice to

the respondent Club assessee apprising it that it had failed to make payment of sales tax on sale of food and drinks to the permanent members during the quarter ending 30-6-2002. The notice assailed the same before the Tribunal praying for a declaration that they are not dealer within the meaning of the Act as there is no sale of any goods in the form of food, refreshments, drinks, etc. by the Club to its permanent members and hence, it is not liable to pay sales tax under the Act. A prayer was also made before the Tribunal for nullifying the action of the Revenue threatening to levy tax on the supply of food to the permanent members for the doctrine of mutuality would come into play.

The Tribunal referred to Article 366(29-A) of the Constitution of India, Section 2(30) of the Act, its earlier decision in Hindustan Club Ltd. v. CCT [Hindustan Club Ltd. v. CCT, (1995) 98 STC 347 (Tri)] held that the payments made by the permanent members are not considerations and in the case of Members' Clubs the suppliers and the recipients (Permanent Members) are the same persons and there is no exchange of consideration. The revenue's appeal before the high court was rejected. A further departmental appeal was made before the Supreme Court.

The Gujarat High Court set aside the demand of service tax on the club or association to its members by holding the same as ultra vires, against which the revenue filed an appeal before the Supreme Court.

The Supreme Court observed as under:-

1. The respondent is an incorporated entity under the Companies Act, 1956 and charges and pays sales tax when it sells products to the non-members or guests who accompany the permanent members. But when the invoices are raised in respect of supply made in favour of the permanent members, no sales tax is collected.

2. The definition of "club or association" contained in Section 65(25a) makes it plain that any person or body of persons providing services for a subscription or any other amount to its members would be within the tax net. However, what is of importance is that anybody "established or constituted" by or under any law for the time being in force, is not included.

3. A Company incorporated under the Companies Act or a cooperative society registered as a cooperative society under a State Act can certainly be said to be "constituted" under any law for the time being in force, relying on the decision in R.C. Mitter & Sons, Calcutta v. CIT, West Bengal, Calcutta [1959] Supp. 2 SCR 641.

4. It is clear that companies and cooperative societies which are registered under the respective Acts, can certainly be said to be constituted under those Acts. This being the case, such activities of clubs or associations are to be excluded prior to 01.07.2012.

5. W.r.t. the period w.e.f. 01.07.2012, the definition of "service" contained in Section 65B(44) is very wide, as meaning any activity carried out by a person for another for consideration.

6. "Person" is defined in Section 65B(37) as including, inter alia, a company, a society and every artificial juridical person not falling in any of the preceding sub-clauses, as also any association of persons or body of individuals whether incorporated or not.

7. What has been stated in the present judgment in so far as sales tax is concerned applies to service tax as if the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person for another for consideration. This would apply w.r.t. the definition of "service" under Section 65B(44) as well.

8. However, Explanation 3 has been incorporated, under sub-clause (a) of which unincorporated associations or body of persons and their members are statutorily to be treated as distinct persons.

9. It will be noticed that the aforesaid explanation is in substantially the same terms as Article 366(29-A)(e) of the Constitution of India. Earlier in this judgment qua sales tax, it has already been held that the expression "body of persons" will not include an incorporated company, nor will it include any other form of incorporation including an incorporated co-operative society.

10. It will be noticed that "club or association" was earlier defined under Section 65(25a) and 65(25aa) to mean "any person" or "body of persons" providing service. In these definitions, the expression "body of persons" cannot include persons who are incorporated entities, as such entities have been expressly excluded under Section 65(25a)(i) and 65(25aa)(i) as "anybody established or constituted by or under any law for the time being in force".

11. "Body of persons", therefore, would not, within these definitions, include a body constituted under any law for the time being in force.

12. When the scheme of service tax changed so as to introduce a negative list for the first-time post 2012, services were now taxable if they were carried out by "one person" for "another person" for consideration. "Person" is very widely defined by Section

65B(37) as including individuals as well as all associations of persons or bodies of individuals, whether incorporated or not.

13. Explanation 3 to Section 65B(44), instead of using the expression "person" or the expression "an association of persons or bodies of individuals, whether incorporated or not", uses the expression "a body of persons" when juxtaposed with "an unincorporated association".

14. The reason as to how the expression "body of persons" occurring in the explanation to Section 65 and occurring in Section 65(25a) and (25aa) does not refer to an incorporated company or an incorporated cooperative society has already been elaborated.

15. In view of the fact that the same expression has been used in Explanation 3 post-2012 (as opposed to the wide definition of "person" contained in Section 65B(37)), it may be assumed that the legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form.

16. The expression "body of persons" may subsume within it persons who come together for a common purpose, but cannot possibly include a company or a registered cooperative society.

17. Thus, Explanation 3(a) to Section 65B(44) does not apply to members' clubs which are incorporated.

18. The expression "unincorporated associations" would include persons who join together in some common purpose or common action as per ICT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna [1960] 3 SCR 513 at page 519-520.

19. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form of an association also, or otherwise as a group of persons who come together with some common object in mind. Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate.

20. The views of the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following the decision in CTO v. Young Men's Indian Association (Regd.) [1970] 1 SCC 462.

Hence, the appeals of the Revenue are dismissed and the consequent show-cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs were declared to be void and of no effect in law.

7. GST–ADVANCE RULING – CO-OPERATIVE SOCIETY PROCESSING MILK AND MILK PRODUCTS WITH DISTRICT CO-OPERATIVE UNIONS AS SHAREHOLDERS – NOT LIABLE TO TDS

In RE: Karnataka Co-operative Milk Producers Federation Ltd. (KMF) 2019 (29) G.S.T.L. 796 (A.A.R.-GST), the applicant is a society engaged in processing of milk and milk products wherein its district co-operative unions are shareholders of the organizations, which are registered under the Goods and Services Act, 2017. An application was filed seeking advance ruling as to whether the applicant is liable to deduct GST TDS under section 51 of CGST Act on the payments made to suppliers. The authority observed as under:

1. The applicant entity was formed and registered under Co-operative Society Act 1959, where the District Co-operative Milk Unions are shareholders of the applicant organisation. Further applicant is a taxable person under the GST Acts and the entire shareholding is with the district milk unions and not with the State Government of any State or the Central Government or any local authority.

2. Hence, the applicant is not a department or an establishment of Central Government/ State Government/local authority consequent to which the applicant is not cover under clauses (a) & (b) of Section 51(1) of CGST Act.

3. The ingredients of clause (d) of Section 51(1) of the Act are enumerated as under:-

a) The applicant has neither been set up by an Act of Parliament nor a State Legislature; and

b) The applicant has not been established by any Government with fifty-one percent or more participation by way of equity or control, to carry out any function; and

c) The applicant has not been established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860; and

d) The Applicant is not a Public sector undertaking.

4. The applicant is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 and the applicant states that they are not registered under Societies Act,1860. Hence the applicant is not a notified person under clause(d) of section 51(1).

5. Clause (c) of the Section 51(1) of the CGST covers "Governmental Agency". "Governmental agency" has not been defined under the CGST Act 2017 or any other notifications. Governmental Agencies are usually administrative units of government that are tasked with specific responsibilities.

6. These agencies can be established by national, regional or local governments. These agencies are entities distinct from government departments or ministries, but they often work closely with and report to one or more departments or ministries. Others operate independently, especially those with oversight or regulatory responsibilities.

7. In the instant case, the applicant has not been established by national, regional or local governments but is registered under Co-operative Society Act 1959, which mandates certain supervisory / participation from the relevant Department of Karnataka State Government.

8. The applicant has not been tasked with any responsibilities by the Government of Karnataka. The Directors have been nominated only to safeguard the funds of the said society. Therefore the applicant is not covered under clause (c) of Section 51(1) of the CGST Act 2017.

9. In view of the above the applicant is not cover under any of the clauses of the Section 51(1) of the CGST Act 2017 and hence is not liable to get registered to undertake TDS deduction.

Hence, the authority held that the applicant is not liable to deduct tax at source as per provisions of section 51 of CGST ACT towards payments made to suppliers of taxable goods or services or both, as they are not covered under any of the clauses of Section 51 (1) of the CGST Act 2017.

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ELECTRONIC INVOICING CONCEPT UNDER GST

CA. DEBASIS NAYAK

The electronic invoicing (e-invoicing) system is going to be the next giant step of Government towards curbing tax evasion under GST regime. The introduction of which brings transparency, efficiency and control in discharging GST and increased revenue. Being a totally new concept in India, implementation would be challenging in terms of traditional practices, modification in ERP & IT system and habituality of the tax payers. Considering this, Government seems to be working actively on the same for smooth implementation.

This concept is not new to the world as various countries like South Korea, Chile, Singapore, USA, Australia New Zealand, Mexico and others have already implemented the electronic invoicing model. It has shown positive sign in terms of reducing the compliance cost and further improving the ease of doing business.

A. Approval of e-invoicing mechanism in GST council

In 35th GST Council meeting held on June 21, a proposal to introduce e-invoice was raised with an overall aim to simplify GST and curb the generation of fake and bogus billing. In this regard, Council has decided to introduce electronic invoicing system in a phase-wise manner for B2B transactions. The Phase 1 was proposed to be voluntary and it shall have be rolled out from 1st January 2020. Based on this, the council has formed a Committee of Officers (CoO) to evaluate the electronic invoice mechanism.

With regard to introduction of e-invoicing, Government has portrayed various advantages of this system which is outlined below:

The e-invoicing can accelerate the business process automation, reduce compliance burden and improve ease of doing business. Moreover, the immediate capture of the details of transaction helps in easing compliance burden, by facilitating auto drafting of returns.

Under the current system, there was a gap between time of generation of invoices and time of filing of Returns (GSTR-1, GSTR-3B, GSTR-4 etc.), which left scope for misdeclaration or errors in submitting returns.

For taxpayers, backward integration and automation of tax relevant processes replaces periodic reporting of forms, separate GST declarations, separate tax accounting etc., Thus, tax collection and refund can be done seamlessly and it also results in early settlement of payable and receivables.

It also reduces the need for post audit systems of invoice matching drastically, as it ensures in real-time that fiscal documents are tax compliant.

It also leads to significant reduction of the tax evasion, which paves the way for better management of taxes and human resources.

The new system will lead to one-time reporting on B2B invoice data to reduce reporting in multiple formats (one for GSTR-1 and the other for e-way bill) and to generate Sales and Purchase Registers (ANX-1 and ANX-2) and from this data to keep the Return (RET-1 etc.) ready for filing.

It is also aimed to make reporting of invoices as an integral part of the business process to eliminate the process of compilation of invoices at the end of the month.

It will lead to substantial reduction in input credit verification issues as same data will get reported to tax department as well as to the buyer in his inward supply (purchase) register on receipt of information through GST System as buyer can reconcile with his Purchase Order and accept/reject well in time.

B. Standard for e-invoicing

Being totally new concept in India, there was no standard for e-invoice existing in the country under GST or under any other statute. Having a standard is a must to ensure complete inter-operability of e-invoices across the entire GST eco-system so that e-invoices generated by one software can be read by any other software, thereby eliminating the need of fresh data entry which is a norm and standard expectation today.

Considering the same, standard has been finalized after consultation with trade/ industry bodies as well as Institute of Chartered Accountant of India (ICAI) after keeping the draft in public place.

The e-invoice draft placed in the public domain was in the following three parts:

1. **E-invoice schema**: It has the Technical field name, description of each field, whether it is mandatory or not, and has a few sample values along with explanatory notes.
2. **Masters**: Masters are included of fields like UQC, State Code, invoice type, supply type etc.
3. **E-invoice template**: This template is as per the GST law and has been provided here to enable the reader to correlate the terms used in other sheets. The **compulsory fields** are marked **green** and **optional fields** are marked **yellow**.

C. Approval of standard by GST Council

The GST Council approved the standard of e-invoice in its 37th meeting held on 20th Sept 2019 and the same along with schema has been published on GST portal for understanding.

D. Meaning of e-invoicing

Currently, taxpayers are issuing the invoices based on their accounting software (like Tally, SAP etc.). Likewise, there are hundreds of accounting/billing software which generate invoices but they all use their own formats to store information electronically and data on such invoices can't be understood by the GST System if reported in their respective formats. Hence a need was felt to standardize the format in which electronic data of an Invoice will be shared with others to ensure there is interoperability of the data. Based on this, concept of e-invoicing evolved. In common parlance, e-invoicing means generation of invoice directly through GSTN portal. Every invoice would contain a unique invoice reference number.

While the word invoice is used, it would also cover credit notes, debit notes and any other documents required by law to be reported.

E. E-invoicing and Tax department

The e-invoicing system across the globe consists of two important parts namely:

Generation of invoice in a standard format to ensure read by another system

Reporting of e-invoice to a central system

The overall aim behind adoption of e-invoice system by tax departments is ability to pre-populate the return and to reduce the reconciliation problems that taxpayers is facing currently and simply the filing process.

F. Process of Generation of E-invoice

Responsibility of generation of e-invoice lies with taxpayer who will be required to report the same to Invoice Registration Portal (IRP) of GST, which in turn will generate a unique Invoice Reference Number (IRN) and digitally sign the e-invoice and also generate a QR code. The QR Code will contain vital parameters of the e-invoice and return the same to the taxpayer who generated the document in first place. The IRP will also send the signed e-invoice to the recipient of the document on the email provided in the e-invoice.

Many people think that e-invoice will be generated from government's tax portal. This is a myth and invoices will continue to be generated using an Accounting or a billing software, keeping in view the varied need of item master, buyer master, UQC etc. along with sub-second response from IR Portal (IRP).

Small taxpayers can use one of the eight free accounting/billing software currently provided by GSTN.

GSTN will provide Offline Tool for uploading the bulk data in IPR portal.

Taxpayers can also use one of the commercially available accounting/billing software for this purpose.

With regard to this Government has separately asked all accounting and billing software companies to adopt the e-invoice standard so that their users can generate the JSON from the software and upload the same on the IRP.

G. *Modes of Generation of e-invoicing*

There would be a multiple mode for creation of e-invoice to the taxpayer and accordingly taxpayer can decide based on their requirement considering the size and nature of business. Below mentioned are the different modes available under the proposed system for e-invoice, through the IRP (Invoice Registration Portal):

1. Web based - E-invoice can be generated on IRP portal directly. Taxpayers can register and log on to this portal to generate IRN
2. API based - Using API mode, the big tax payers and accounting software providers can interface their systems and pull the IRN after passing the relevant invoice information in JSON format.
3. SMS based – Taxpayer can generate e-invoice by sending the relevant details through message
4. Mobile app based – Taxpayer can issue IRN on interactive mobile app that may be integrated with Central Portal.
5. Offline tool based - IRN can be generated offline and can be transmitted to Central Portal in batch mode.
6. GSP based - GST Suvidha Providers can also generate e-invoice on behalf of taxpayers.

H. Features of E-invoicing

Particulars	Description
Format of Unique Invoice Reference Number (IRN)	The unique IRN will be based on the computation of hash of GSTIN of generator of document (invoice or credit note etc.), Year and Document number. The hash could also be generated by the taxpayers based on algorithm standard published in public domain. The provider of accounting and billing software are asked to incorporate this feature in their software. Based on that, one can pre- generate and print it in invoice book but the same has to be registered in portal with the invoice details.
Digital Signing by e-Invoice Registration Portal	Invoice data has to be uploaded in IRP portal, which will generate IRN and then digitally sign the invoice using private key of IRP.
QR Code	IRP would also generate a QR code for each IRN which contains important parameters (GSTIN of supplier and receiver, date of generation etc.) and digital signature. This QR code can be verified by central portal as well as offline app. This will be helpful for the tax officials for checking the validity of invoices even though internet connection is not available.
Multiple Registrar for IRN System	Government is implementing multiple registrar of IRP for e-invoice to ensure 24X7 generation without any failure and breakdown.

A DISCUSSION PAPER ON CHAPTER III- DIRECT TAXES OF FINANCE (NO.2) ACT, 2019- JULY & AUGUST 2019

CA. VIVEK RAJAN V

Introduction- Thanking everyone for our Discussion Papers of 2016, 2017 & 2018 & 2019 (Interim Budget of 2019)

The Finance (No.2) Bill, 2019 (Bill No. 55 of 2019) was presented in Lok Sabha on 05th July 2019 by Ms. Nirmala Sitharaman, Union Finance Minister. In Chapter III of Finance (No.2) Bill, 2019, there has been 66 amendments proposed to the Income-tax Act, 1961. The Finance Bill got the assent of the Hon'ble President of India on the 01st of August 2019 and became the **Finance (No.2) Act, 2019.**

Scope of the Discussion Paper

This discussion paper attempts to **cover all sections of the Finance (No.2) Act, 2019** relating only to Direct Taxation. This discussion paper attempts to cover all the aspects about the amendments broadly and not in detail. Further unless otherwise specifically mentioned, sections discussed in this paper, relates to Income-tax Act, 1961 and the Finance (No.2) Act, 2019. Please refer to Finance (No.2) Act, 2019 and the relevant pronouncements before taking any decision. The readers are requested to contact the author, in case of errors (which are unintentional) and also in case of divergent views with the author's note.

An Attempt

We are attempting to extend the coverage of the discussion paper **to all the sections of the Finance Act**. Giving due consideration to the volume of the discussion paper and the challenges involved in publishing, we intend to present this in a phased manner (December 2019 and January 2020). ***The sections which are not covered in this month's bulletin, would have been covered in the previous month (s) bulletin or would be covered in the subsequent month's bulletin***. We sincerely hope that this effort is of value addition to the readers.

Acronym and Description

FA	Finance Act
CG	Capital Gains
IFHP	Income from House Property
LTCG	Long Term Capital Gain
The Act	Income Tax Act, 1961
PY	Previous Year
AY	Assessment Year
PCIT	Principal Commissioner of Income-tax
CIT	Commissioner of Income-tax
NRI	Non- resident Indian
RBI	Reserve Bank of India
NCLT	National Company Law Tribunal
FMV	Fair Market Value
TDS	Tax Deducted at Source
TCS	Tax Collected at Source
APA	Advance Pricing Agreement
ALP	Arm's Length Price
IFSC	International Financial Services Centre
TDS	Tax Deduction at source
FII	Foreign Institutional Investors
FPI's	Foreign Portfolio Investors

1. **Tax on Buy-back of shares by listed companies announced after 05th of July 2019- Amendment of Section 115QA by Finance Act 2019 and The Taxation laws (Amendment) Ordinance, 2019**

   Present scenario and reference to Explanatory Memorandum

   Buy-back of shares by unlisted companies was taxable in the hands of the company @ 20% and the consequential income arising in the hands of the shareholder was exempt under Section 10(34A) of the Act.

   The above anti-abuse provision was initially restricted to unlisted companies resorting to buy-back instead of payments of dividends as the rate of tax for capital gains was lower that Dividend Distribution Tax (DDT).

However, instances of listed companies resorting to such practice to avoid DDT have come to notice and hence the proposal to extend the provisions of this section to listed companies.

Amendment

Section 115QA has been suitably amended to bring to tax, the buy-back of shares made by listed companies with effect from 05th day of July 2019.

The CG vide The Taxation laws (Amendment) Ordinance, 2019 has exempted such tax on buy-back of shares in respect of which public announcement has been made before the 05th of July 2019, in accordance with the regulations of SEBI Act, 1992.

In other words, the buy-back of shares by listed companies is taxable on a prospective basis for announcements made after 05th of July 2019.

This one time offer would benefit major IT companies and few examples are as under

Wipro Limited	Rs. 10,500 Crore buy-back programme announced in June 2019
Infosys Limited	Rs. 8260 Crore buy-back commencing in March 2019 and ending in August 2019

Author's note- Comparison of tax on dividend distribution and tax on buy-back of shares

Tax impact in case of declaration of dividend

Tax on the company

Particulars	**Total Dividend (Rs.)**	**Dividend distributed to shareholder (Rs.)- *Separate analysis done in table below***
Dividend	1,00,00,000	25,00,000[Forming part of the total dividend of Rs. 1 Crore]
Grossed up @ 17.65%	17,65,000	4,41,250
Grossed up dividend	1,17,65,000	29,41,250
DDT @ 20.56%	**17,64,750**	**4,41,188**

Tax on the recipient if dividend received is more than Rs. 10 Lakhs

Particulars	Amount (Rs.)
Dividend received by Individuals/ Trusts	25,00,000
Tax @ 10% including cess(on dividend exceeding Rs. 10 Lakhs)u/s Section 115BBDA	**1,56,000**

Total tax on Rs. 25 Lakhs

Particulars	Amount (Rs.)
By the company as DDT	4,41,188
By the recipient	1,56,000
Total tax	5,97,188
% of tax on Rs. 25 Lakhs	**23.89%**

Tax on Buy-back of shares

Scenario

Company ABC declares buy back of shares on 20th November 2019 at the rate of Rs. 1,100 per share , the original issue price being Rs. 100. The quantum of shares to be purchased is 10,000.

Out of that 10,000 shares , 500 shares were purchased from Mr. B. Mr. B had purchased the same from Mr. A @ Rs. 600 per share.

Mr. A had previously purchased the 500 shares @ Rs. 400 each and sold it to Mr. B , resulting in a LTCG.

The following tables explains the impact of taxation from the company's standpoint and also from the individual shareholder's standpoint.

From the company's standpoint

Particulars	No.of shares	Rate per share	Amount (Rs.)	Buy-back of shares for the lot of 500 shares from Mr. B
No . of Shares-**A**	10,000	1,100	110,00,000	5,50,000[500*Rs.1100]
Original Issue Price-**B**	10,000	100	10,00,000	50,000[500*Rs.100]
Distributed Income – **A-B**			100,00,000	5,00,000
Buy-back tax at 20%			**20,00,000**	**1,00,000[Included in Rs. 20 Lakhs]**

From the shareholder's standpoint- Tax paid on the transaction previously

Particulars	No.of shares	Amount (Rs.)
Sale by Mr. A	500	3,00,000 [500 shares * Rs.600]
Less: Indexed Cost of Acquistion *(CII not used for sake of simplicity)*		2,20,000 [500*400]*110%]]
LTCG		80,000
Tax at 10%		8,000

Total tax on sale and buy-back of 500 shares

Particulars	Amount (Rs.)
Tax by Mr.A	8,000
Tax on buy-back by company	1,00,000
Total Tax	1,08,000
% of tax on distributed income of Rs. 5,00,000	**21.60%**

Even though effective tax rate is lesser under the buy-back option, the option of dividend distribution is better as the taxation for both the company and the recipient is futuristic unlike buy-back where the transaction would have been subjected to tax at an earlier stage in the hands of the shareholder , the information about the same being not available to company resorting to buy-back.

2. Consequence of not linking PAN with Aadhaar- Amendment of Section 139AA

With effect from 01st September 2019

Present scenario and reference to Explanatory Memorandum

PAN allotted to a person shall be deemed to be invalid, in case the person fails to intimate the Aadhaar number, on or before the notified date.

In order to protect validity of transactions previously carried out through such PAN, it is proposed to provide that if a person fails to intimate the Aadhaar number, the PAN allotted to such person shall be made inoperative in the prescribed manner.

Amendment

Section 139AA has been amended suitably to ensure that making of the PAN inoperative shall not affect the past transactions.

3. E-filing of statement of transactions on which tax has not been deducted-Replacement of Section 206A

With effect from 01st September 2019

Present scenario and reference to Explanatory Memorandum

A banking company or co-operative society or public company subject to the limits specified in the section, was supposed to furnish a quarterly statement in respect of payment of interest without deduction of tax at source.

The said statement was to be filed on a floppy disk, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

The amendment is proposed to enable online filing of such statements and also to provide for correction of such statements and also to give consequential effect to amendment of Section 194A. [Para 8 of our Discussion Paper in the bulletin of March 2019]

Amendment

Every banking company or co-operative society or public company responsible for paying to resident, income in the nature of interest exceeding **Rs. 40,000 / Rs. 5,000** [Rs. 40,000 for banking company or co-operative society and Rs. 5,000 for public company] without deduction of tax at source, shall prepare and file a statement in such form and manner and periodicity as may be prescribed.

4. Amendment of Section 246A- Consequential to amendment of Section 92CD- Para 2 of our Discussion Paper of September 2019

With effect from 01st September 2019

Present Scenario and reference to the Explanatory Memorandum

Section 92CC empowers the CBDT to enter into APA, with the approval of CG to determine the ALP. The APA is valid for a period not exceeding 5 years and can be rolled back for 4 years.

In order to give effect to APA, Section 92CD also provides for mechanism, including filing of modified return of income and manner of completion of assessments by the AO having regards to the APA.

Section 92CD (3) deals with a situation where assessment/ re-assessment has already been completed, before expiry of the time allowed for filing of modified return of income. Apprehensions were expressed stating that due to the use of words "assess or reassess or recompute", the AO may start fresh assessments or re-assessment in respect of completed assessments of assessee's who have modified their returns of income in accordance with APA.

However, the legislative intent is to enable the AO only to carry out modification of the total income consequent to modification of return of income in pursuance to APA. Hence amendment has been proposed to Section 92CD and to Section 246A as a consequential effect.

Amendment

The language of Section 246A(1)(bb) has been suitably amended so as to remove "assessment or reassessment" and to substitute it with "made".

Author's note

This consequential amendment also clarifies that the order modifying the total income in accordance with the APA would be appealable u/s 246A(1)(bb).

(The author is a Chennai based Chartered Accountant in Practice. He can be reached at vvr@vvrcas.com)

EXCEL TIPS

ALIGNMENT (Part 2 / 2)

CA DUNGAR CHAND U JAIN

"The closer you are to alignment with what you want, the calmer life feels." So alignment matters.

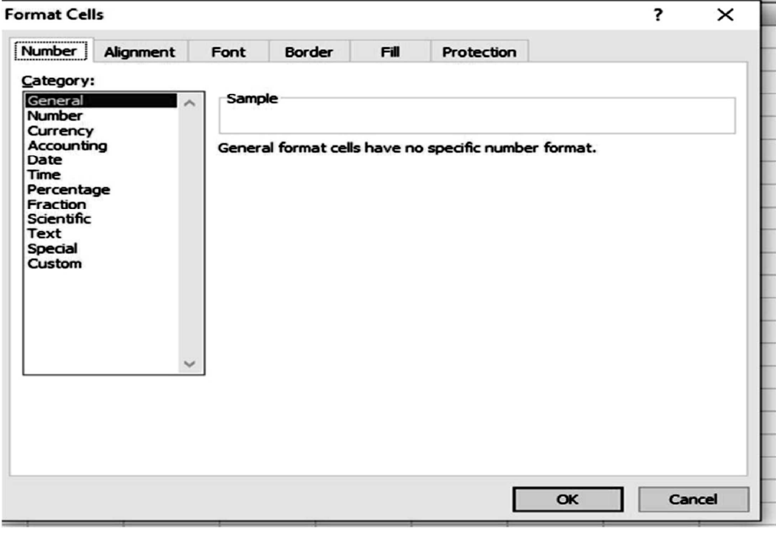
However the context mentioned in the above quote is different which can be a separate subject matter for discussion in itself.

Here, we continue our journey of Excel Tips on *Alignment* with regards to *Microsoft Excel*. Last month some basic features relating to alignment was covered and now we will cover some additional features which will help present our reports and certificate better.

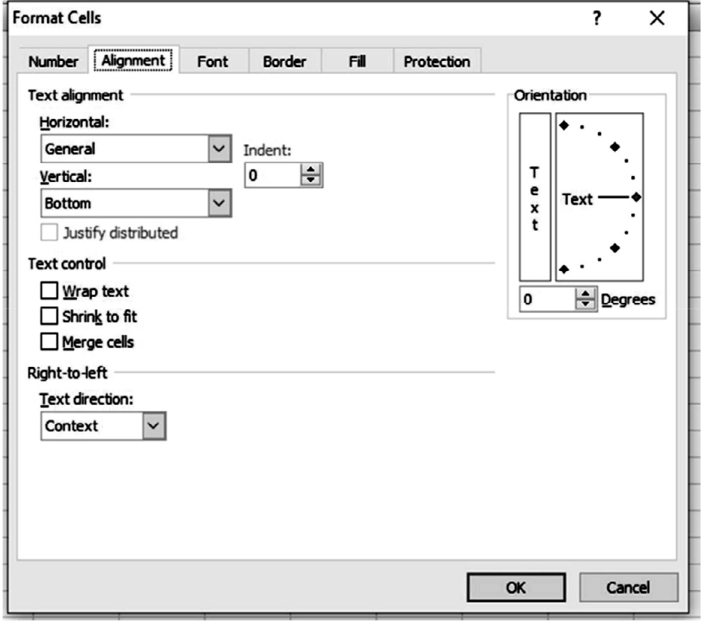
Aligning text using Format Cells

Under Home tab on the ribbon, we can click the arrow available on the right end in the **Alignment** group.

This will open the ***Format Cells*** Dialog box. Shortcut Ctrl + 1 also can be used to open the ***Format Cells*** Dialog box.

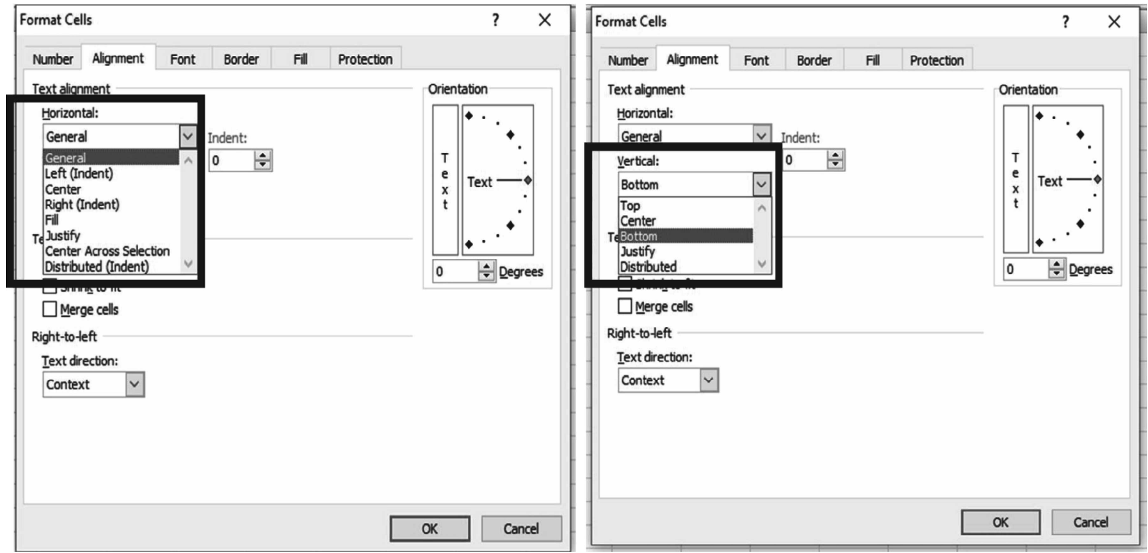


It has six tabs. Of which the second tab is **alignment**



Text alignment options :

Horizontal and Vertical

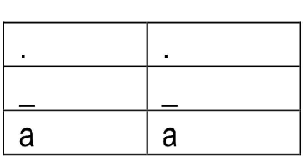


Using **Fill** under **Horizontal Text Alignment :**

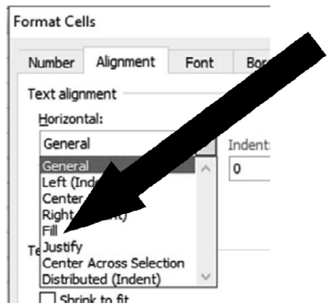
By using the **Fill** option under the **Horizontal Text Alignment,** we can repeat the current cell symbol or text or content for the width of the cell.

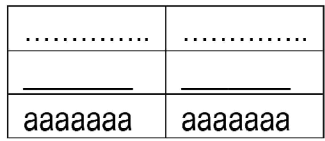
For example, we can quickly create a border element by typing a "." in one cell, choosing Fill under the Horizontal alignment, and then copying the cell across several adjacent columns.

Similarly we can type "_" or any alphabet depending on what we need to fill the cell.



.	.
_	_
a	a

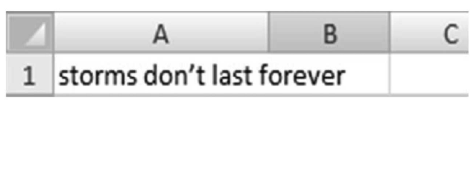


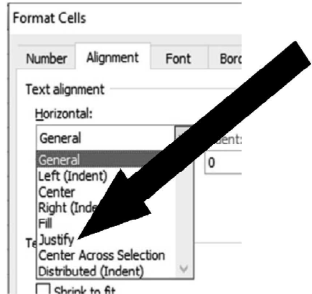


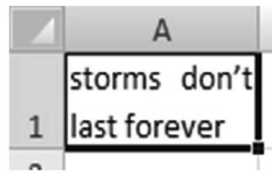
....	....
_________	_________
aaaaaaa	aaaaaaa

Justify text (Horizontal) :

To justify text horizontally, in Format Cells dialog box, we need to select **Justify** option from the **Horizontal** drop-down list. This will wrap text and adjust spacing in each line (except for the last line) so that the first word aligns with the left edge and last word with the right edge of the cell

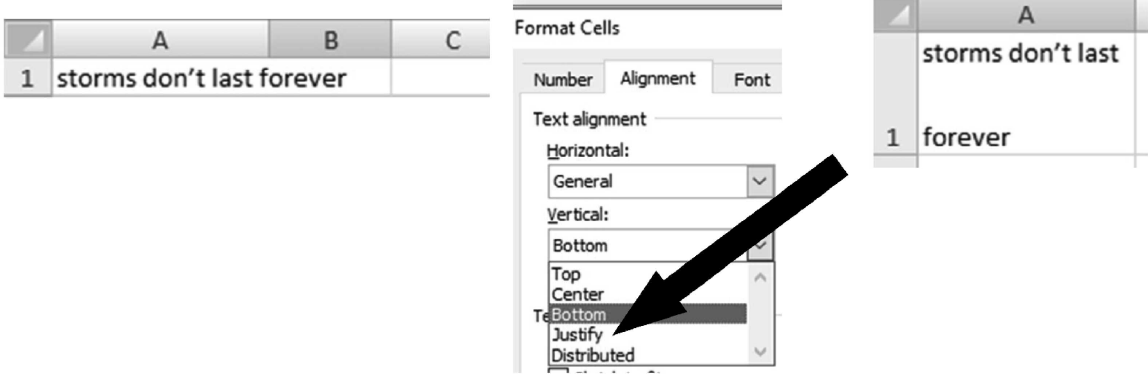






Justify text (Vertical) :

The Justify option under Vertical alignment also wraps text, but adjusts spaces between lines depending on the row height:



Distributing text :

Like *Justify*, the **Distributed** option wraps text and "distributes" the cell contents evenly across the width or height of the cell, depending on whether we have enabled **Distributed horizontal** or **Distributed vertical** alignment, respectively.

Unlike *Justify*, **Distributed** works for all lines, including the last line of the wrapped text. Even if a cell contains short text, it will be spaced-out to fit the column width (if **distributed horizontally**) or the row height (if **distributed vertically**). When a cell contains just one item (text or number without in-between spaces), it is centered in the cell.

Distributed horizontally

	A
1	storms don't last forever

Distributed vertically

	A
1	storms don't last forever

Distributed horizontally& vertically

	A
1	storms don't last forever

Between Distributed and Justify option, there are small variances. Depending on how we need the contents to look like, various permutations and combinations of the same can be used.

Also, where we want to justify the contents as in Microsoft word, we can get the desired results by selecting Horizontal Justify and Vertical Justify. This justifies the contents depending on the row and column height.

Nresults by selecting Horizontal Justify and Vertical Justify. This justifies the contents depending oustified and/or distributed text works better in wider columns.

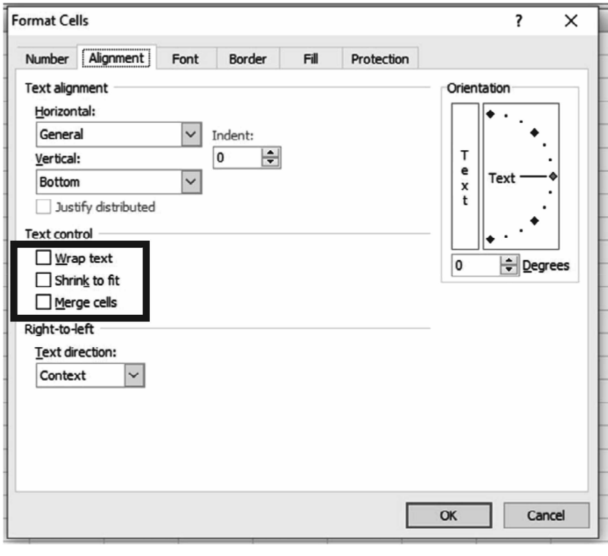
- Both Justify and Distributed alignments enable wrapping text In the Format Cells dialog, the Wrap text box will be left unchecked, but the Wrap Text button on the ribbon will be toggled on.

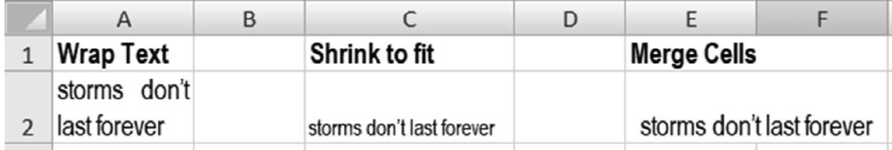
Text control options :

Wrap text - if the text in a cell is larger than the column width, this feature displays the contents in several lines.

Shrink to fit - reduces the font size so that the text fits into a cell in a single line without wrapping. The more text there is in a cell, the smaller it will appear.

Merge cells - combines selected cells into one cell.



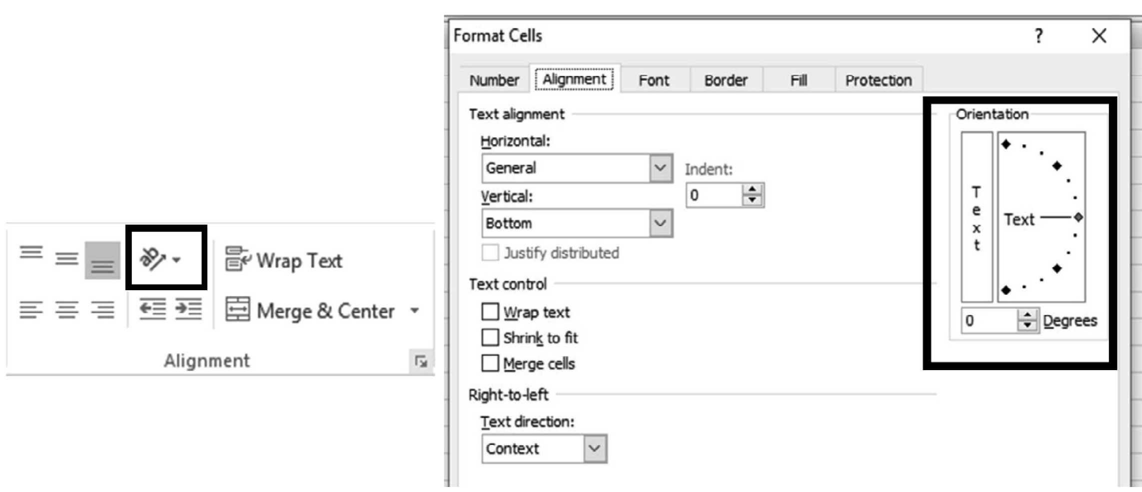


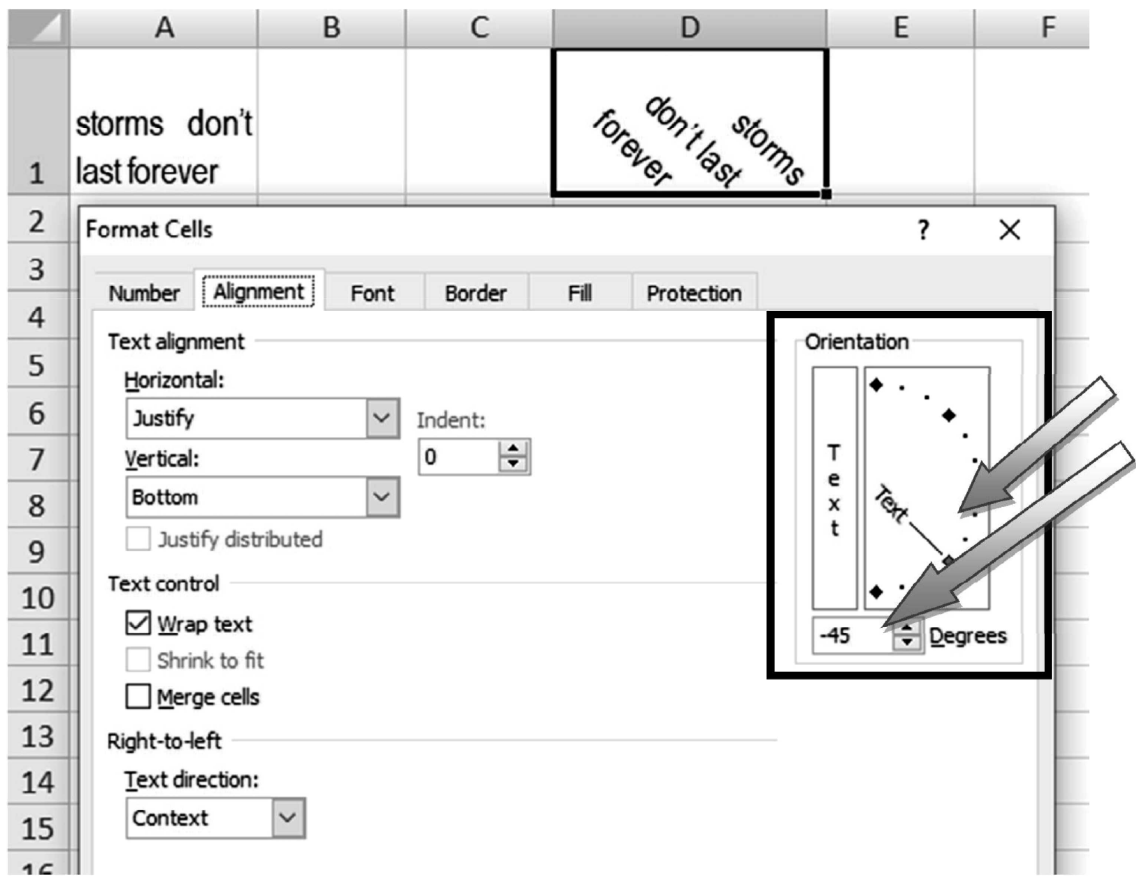
	A	B	C	D	E	F
1	**Wrap Text**		**Shrink to fit**		**Merge Cells**	
2	storms don't last forever		storms don't last forever		storms don't last forever	

Changing Text direction :

Text orientation option is available on the ribbon but it allows only to make text vertical, rotate text up and down to 90 degrees and turn text sideways to 45 degrees.

The **Orientation** option in the Format Cells dialog box however enables us to rotate text at any angle, clockwise or counterclockwise. Simply by typing the desired number from 90 to -90 in the Degrees box or dragging the orientation pointer.





These above features can be used to enhance presentation of our reports or documents better

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NEWS RE-COLLECT

Regulatory actions stoke fears of talent flight among audit firms

The Economic Times Nov 03, 2019

In recent times, there has been a spate of actions against auditors, including PwC and Deloitte.

Amid a crackdown on erring auditors in cases of alleged financial irregularities, some experts and top executives at some audit firms are raising alarm bells about a possible flight of fresh talent from the profession.

While few are willing to speak openly against actions taken by regulatory and enforcement agencies against auditors for failing to flag financing bungling, senior executives at major audit firms said it was wrong at times to ban an entire audit network for alleged lapses by one or two individuals.

On the other hand, officials at regulatory and enforcement agencies said the audit firms tend to put the blame on individuals after finding themselves in the dock for their alleged role in frauds.

The officials have often pointed out that auditors are supposed to be the conscience keepers of a company and it is their duty to ring the alarm bells even at the slightest hint of a financial wrongdoing.

In recent times, there has been a spate of actions against auditors, including against PwC in the Satyam case and against Deloitte and BSR in the IL&FS matter.

Markets watchdog Sebi has moved the Supreme Court against the Securities Appellate Tribunal's ruling that had quashed a two-year ban on PwC in connection with the Rs 7,800- crore Satyam scam.

In the IL&FS case, the Bombay High Court has granted a stay on NCLT proceedings against the company's erstwhile auditors, while some auditors were recently arrested by the Economic Offences Wing of the Mumbai Police in the NSEL matter, though they were released subsequently on bail.

Some auditors, including in the case of IL&FS matter, have come under the scanner of the Serious Fraud Investigation Office (SFIO) while National Financial Reporting Authority (NFRA) is looking into alleged accounting lapses at Infosys.

"There are fewer people now who are excited to join the audit profession, primarily due to a narrative that has got built around it in the recent times," said one of the partners at a leading audit firm, citing actions taken by regulatory and enforcement agencies and the judiciary.

The Institute of Chartered Accountants of India's (ICAI's) former central council member Vijay Gupta said strict actions taken so far against auditors have meant that they have to undergo unwarranted scrutiny by authorities all the time, thereby constantly being under the scanner.

This is dissuading the new talent from pursuing auditing as a profession, he added.

"Any young talent passing out from a professional course prefers to have freedom to practice his or her ideas in real life so as to explore one's self professionally. Sadly, auditing as a choice of profession is facing more roadblocks in the present scenario," SHRM (Society for Human Resource Management) India CEO Achal Khanna said.

The head of a leading executive search firm said new talent is more excited to join consulting roles than becoming part of an audit firm.

"Liability mechanism for auditors is an area that needs to be duly addressed. Drastic actions are being taken against auditors even before being proven guilty," said an auditor at a leading audit firm.

He questioned the rationale behind banning an entire audit firm, saying such moves have a larger impact on the industry and on people working in such organisations.

According to him, such actions would keep high-quality talent away from the audit profession and create an atmosphere of fear, trigger a spate of resignations by auditors and thus might impact investors in a big way.

"Lack of quality talent will create further challenges for the audit profession in the country as the quality of audit would suffer, impacting the output around which major investment decisions are taken," private equity investor Sandeep Parwal said.

Experts opine that availability of trustworthy financial information on performance of companies is important for proper functioning of a market economy, but the entire auditing system has got into a precarious situation as questions are being raised around integrity of auditors.

Serious concerns arise if auditors' independence is compromised or when trust reposed in them gets betrayed as independent audits are fundamental to taking informed and correct investment decisions.

Generally, auditing is a lucrative profession with high-salaried positions. The duty of auditors are discharged by chartered accountants.

Set up under an Act of Parliament, the ICAI is the apex body of chartered accountants.

"Founded with about 1,700 members, the Institute has today 2,91,698 members as on March 31, 2019," as per the institute's annual report for 2018-19.

IL&FS case: NFRA, ICAI spar over probe into auditors' role

The Economic Times - Apr 27th, 2019

A chartered accountant body had filed a petition in Delhi High Court challenging the vires or power of NFRA.

The question on who should investigate the role of auditors EY, Deloitte and KPMG in the IL&FS fiasco seems to have triggered a turf war between two regulators — Institute of Chartered Accountants of India, and National Financial Reporting Authority (NFRA).

NFRA, the recently formed regulator under the ministry of corporate affairs (MCA), has taken over the probe into whether any of the three multinationals were negligent in auditing Infrastructure Leasing & Financial Services and its subsidiaries IL&FS Financial Services (IFIN) and IL&FS Transportation Networks (ITNL), five people close to the development said.

"ICAI now has no authority to go ahead with the probe and essentially it has been asked to back off," audit head of one of the biggest Indian audit firms told ET.

According to the sources, the government brought in NFRA last year through notified rules. It has power to monitor and enforce compliance related to auditing, accounting and also investigate firms and CAs.

A chartered accountant body had filed a petition in Delhi High Court challenging the vires or power of NFRA.

According to a person with direct knowledge of the matter, some ICAI members had met senior government officials about the conflicting roles of ICAI and NFRA. "The ICAI members were told in as many words that NFRA is the final authority," the person said.

Another person said the CA association that had moved the HC is now looking at withdrawing the case. This could not be independently verified. "There cannot be turf war between the institute and the government," said the audit firm head quoted earlier. "If ever there was war, NFRA has already won."

Questionnaire sent to MCA and ICAI did not elicit any response as of press time Friday.

In December last year Quality Review Board (QRB) —set up by the government to evaluate the services provided by ICAI members — had initiated a probe into checking the quality of the audits of IL&FS group, and to ascertain whether any of the audit partners or the firms were negligent or were in connivance with IL&FS and its board members.

"Few weeks back QRB withdrew its letters and is no more conducting the probe," said one of the persons cited earlier. "Similar probe is now done by NFRA."

When QRB — five of whose 10 members are nominated by ICAI — checks quality of audit conducted in cases where there were allegations of misconduct, it would refer the problems it found, if any, to ICAI. The latter would then initiate an appropriate action against the erring audit partner or chartered accountant.

"QRB would hire smaller CA firms to conduct the audit review," said another person with direct knowledge of the matter.

But now, in the case of IL&FS firms, NFRA has initiated a probe and it would take necessary action, the person said.

Chit Fund Amendment Bill gets Lok Sabha's approval

The Hindu Businessline – 21st November 2019

Key provisions include raising the limit for individual contribution to Rs. 3 lakhand higher commission for foremen.

The Lok Sabha, on Wednesday, passed a Bill to regulate chit funds more effectively.

The Bill will now be taken up by the Rajya Sabha before the President gives his assent so that the Bill can become a law.

Replying to a debate on the Bill in the Lok Sabha, Anurag Singh Thakur, Minister of State for Finance, said that only the deposit schemes registered with any of the nine regulatory agencies are legal.

These include the RBI, SEBI, Corporate Affairs Ministry, and the Registrar of Co-operative Societies. He appealed to all to spread this message as part of the government's nancial literacy drive. After enactment of the Chit Funds (Amendment) Bill 2019, the government expects to have an effective mechanism to regulate the savings sector and curb ponzi schemes.

The government has already made a law to ban illegal deposit schemes.

The new Bill aims to amend the Chit Fund Act, 1982. The original law was enacted to regulate chit funds, which have conventionally satised the nancial needs of low-income households.

It is a mechanism that combines credit and savings in a scheme, in which a group of individuals come together for a pre-determined duration and subscribe a certain sum of money by way of periodical instalments, and each subscriber gets the collected sum by lot, auction or tender.

In this way, those in need of funds, and those who want to save, are able to meet their requirements simultaneously.

New additions

The new Bill has incorporated some of the recommendations of the previous Finance Ministry Standing Committee. One such recommendation talks about allowing a chit fund company to mention Rotating Savings and Credit Association (ROSCA institution) under their name.

This will help in distinguishing their business from other unconnected businesses. The old Bill had a provision for incorporating the name 'fraternity fund', instead of the commonly known 'chit fund'. Now, the words 'ROSCA institution' will be added to the nomenclature 'fraternity fund'.

Insertions of these words will signify its inherent nature and distinguish it from 'prize chits' that are banned under a separate legislation.

Another key provision of the new Bill is enhancing the limit for individual contribution to Rs. 3 lakh from Rs. 1 lakh; for companies, it would be Rs. 18 lakh, against the present provision of Rs. 6 lakh.

The old ceilings are in place since 2001. Other provisions include allowing mandatory presence of two subscribers, either in person or through video conferencing duly recorded by the foreman; increase of ceiling of the foreman's commission to 7 per cent from 5 per cent; and enabling the foreman to have a right to lien for the dues from subscribers.

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niyogin

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Are you a financial expert looking to help your small business customers grow?
Look No Further!

Small businesses are at the heart of the Indian economy. niyogin with its **fully digital and truly paperless platform** strives to empower small businesses meet their capital

The niyogin partner program provides you with a host of benefits:

Financial rewards for all loans originated through you

Free customised website for your business

Personalised on-ground support and account management

Opportunity to participate in local events and seminars to grow your business

Customised unsecured loan products for your target segment & markets

How to become a partner:

Visit https://www.niyogin.in/become-a-partner

Scroll down and click on **"request for one"** below enter invite code

Fill in the details and our executives will get in touch with you

BECOME A PARTNER LINK: 18002660266 partnersupport@niyogin.in

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