CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE
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MEETINGS

Date	Time	Speaker	Topic
12.07.2018 Thursday	06.30 p.m.	CA. P. Rajendrakumar	Disciplinary Proceedings
26.07.2018 Thursday	06.30 p.m.	CA. Sricharan Rajan	Cancellation of Trust Registration under Income Tax Act - Issues

Preceded with High Tea Half an hour before the scheduled time of meeting.

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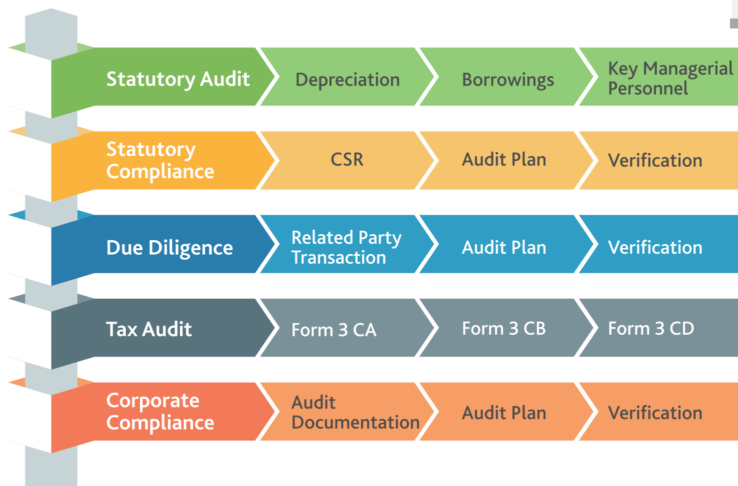

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EDITORIAL

CHARTERED ACCOUNTANTS DAY !!!

Let me on behalf of the Association greet all our members fraternity belated Chartered Accountants Day of 1st July.

We had a moment of rejoice when the Hon'ble Prime Minister had mentioned "……..A nation as hugeand diverse as India has not only been able to adapt to the new system but is also registering robust economic growth. Such a feat could not have been achieved without your vital contribution not only helping businesses adapt to the new tax regime but also coming up with innovative ways to simplify the system……….."

This is a really soothing to our feelings, which has been literally hurt on 1st July 2017, when he had addressed our members in person, questioning our contributions !!

TAX FILING BECOMING A NIGHT MARE !!!

I am sure each of your offices are hectically driven towards the first target of this year, 31st July 2018, being the last day for filing of Tax returns without penalty, for salary clients, non tax audit business assesses, etc. Come what may the clients have their own way of laid back attitude and providing information in peacemeal manner. Can we expect a waiver of penalty as another general amnesty ???!!!

It is in the interest of the professionals to ensure that the final tax return is filed online, after getting a confirmation of computations from the assesses in writing. Seeing the multiple disciplinary cases on the professionals, it may not be in distant when a CA is proceeded for wrong or improper filing, non sending of ITR V to CPC, etc. since no clients are interested in paying any penalty and try to recover the same from the paltry fees paid, which is many a time lesser than the penalties leviable.

Further details asked for in the current year returns are increasing and taking more time spent on filling and filing.

The risk taken has to be rewarded duly and hence I request colleague professionals to Charge the assesses appropriately without fear of losing the clients, since the Time Spent by us have a huge value.

SFT RETURNS :

The professionals as well as assesses are keeping their fingers crossed on the response from the Department either immediately or any later, to the Form 61 A filed or not filed by them.

GST ANNIVERSARY CELEBRATED ???!!! :

On CA Day, the nation celebrated GST anniversary with much ado and in fact with negativism. But the Ministry is glad with the implementation apparently, with revenue hitting over One Lac crore and marching steadily.

The professionals as well as assesses are equally relieved in the deferment of RCM implementation under section 9 (4) till 30TH September 2018 which is also expected to be extended in view of the impending elections to few states immediately and Centre too if early elections are announced.

Prime Minister has categorically rejected the option of One Nation one Rate, stating "Mercedes and Milk cannot have same tax". He is absolutely right in the perspective of Diversed economic status of the Indian Public as a whole. And the same voices asking for one rate, will definitely scout for exemption in most of the goods and services……..which will defeat the basic purpose of the legislature.

CASC Programmes :

In this month we have a very important topic on Disciplinary Proceedings of ICAI to be addressed by CA P. Rajendrakumar, who will share his experiences as a member of Disciplinary Committee at ICAI. This topic is of paramount importance in view of the continuous Resignation of Auditors, which is being viewed closely and seriously by Statutory Authorities. As a matter of fact, a resignation itself is being used as a point for disciplinary case against a professional.

The Second meeting of the month is going to be addressed by a bright young CA Sricharan Rajan, on another important and emerging topic of Cancellation of Registration of Trusts u/s 12 A of the Income Tax Act, which is becoming a burning issue after the amendments in the Act in recent years.

We request huge participation by our members for both the important meetings and encourage the organisers to have more such meetings for the benefit of the fraternity.

The Management Committee is still scouting for the best venue for hosting the 20th Annual Residential conference in the Ruby Anniversary Year and request members to wait for further announcements.

Let me wind up on editorial of the "CA Day" month, with a request to our fraternity to ***Practice and Live with conscience,*** to hold aloft the torch of ICAI in the nation building exercise.

On behalf of Editorial Board of CASC

R. Sundararajan

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ANNOUNCEMENTS

1. The copies of the material used by the speakers 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.

READER'S ATTENTION

You may please send your Feedback Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest at ***admin@casconline.org***

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RECENT JUDGMENTS IN VAT CST GST

CA. V.V. SAMPATHKUMAR

Input Tax Credit : On receipt of the notice for the levy of tax for the usage of accumulated input tax credit for the inter-State transactions, the petitioner submitted their objections both on consignment sales as well as on legal issues and has referred to a decision of this Court, in the case of Tvl. Sogan Starch Industries, Salem Vs. AC (CT) Leigh Bazaar Circle, in W.P.No.68 of 2015, wherein, the Court, after taking note of the scope of Section 19 (17) of the TNVAT Act held that, adjustment of excess tax was proper. But the respondent, while completing the assessments, seek to distinguish the decision relied (supra) by stating that, it does not relate to the petitioner. The Court held that this is not the manner, in which, the AO should consider the decision of the Court. What is required to be seen by the AO is the ratio decidendi, which has been laid down in the said decision. The Court, after referring to Section 19 (17) of the TNVAT Act, held that, if ITC determined by the Assessing Officer for a year exceeds the tax liability, then, the excess can be adjusted against the outstanding tax due from the assessee. The Department has not preferred any Appeal against the order passed in the above case of Tvl. Sogan Starch Industries. Thus, the decision in the case of Tvl. Sogan Starch Industries binds the respondent and the reason given by the respondent for not applying the decision is incorrect and accordingly, the Writ Petition is allowed and the impugned orders are quashed. **Tvl. Suresh Enterprises Vs. The AC (ST) Annadhanapatty Assessment Circle, Salem. (Mad) [2018] Writ Petition Nos.1001 to 1004 of 2018 Dated: 01.02.2018**

Best of judgement assessment: The Petition filed u/s 22(6) of the TNVAT Act, 2006 has been rejected. Admittedly, when inspection was conducted in the place of business of the petitioner, they were not registered, but, immediately thereafter,

they obtained registration with effect from 28.11.2012. However, the respondent while completing the assessment stated that the petitioner is an unregistered dealer. This finding is factually incorrect. However, the respondent has accepted this fact in the counter affidavit stating that the petitioner is a registered dealer with effect from 28.11.2012. The petitioner within a period of thirty days from the date of receipt of the assessment order, filed a petition u/s 22(6) of the TNVAT Act and requested the respondent to re-do the assessment. Soon after the petitioner was registered as a dealer, they had filed returns in Form L and also remitted tax, when the respondent has rejected the petition filed u/s 22(6) of the TNVAT Act. In the petition filed u/s 22(6) of the TNVAT Act, the petitioner has stated as to what prevented them from getting themselves as registered dealers. The Court held that this explanation can be accepted as being reasonable cause for not being able to file the returns in time. Considering the fact that the petitioner has immediately got themselves registered soon after the inspection and paid taxes, this is a fit case where the respondent should consider the petition filed u/s 22(6) of the TNVAT Act, consider the returns filed by the petitioner and re-do the assessment for the full year.

Sre Sai Builders Vs.The AC (CT) Thudiyalur Assessment Circle[2018](Mad) W.P.No.10690 of 2013 DATED: 08.01.2018

Assessment : When the petitioner filed their objections on 12.3.2014 for the notice dated 07.2 2014, for 3 1/2 years nothing had happened and after the present officer took over charge, the second notice dated 21.9.2017, for all the relevant assessment years 2009-10 to 2013-14, was issued. On receipt of the said notice, the petitioner sent a letter dated 26.10.2017 seeking six months' time to file their objections. Further, the objections dated 09.11.2017 were made ready and were taken to the office of the first respondent and the first respondent was stated to have refused to receive the objections dated 09.11.2017. Therefore, on 23.11.2017, the objections were sent by registered post and received by the office of the first respondent on 26.12.2017, as could be seen from postal acknowledgements. However, on the very next day, the impugned assessment orders were passed by putting the date as 02.11.2017. Hence, the Court was of

the prima facie view that in all probabilities, the impugned orders are antedated. In any event, as on 26.12.2017, the objections filed by the petitioner sent through registered post, were on the file of the first respondent and therefore, before despatch of the orders to the petitioner, if the objections were available on the file, he ought to have considered the same. The manner, in which, the first respondent completed the assessment, is wholly unsustainable and deprecated. For all the above reasons, the writ petitions are allowed and the impugned orders are set aside with remand directions to the AO.**Ashok Agencies Vs. AC (ST),Salem Town North Assessment Circle[2018] (Mad) Writ Petition Nos.1136 to 1140 of 2018 Dated: 19.1.2018**

Revision: The revisional powers under Section 16[1][a] of the TNGST Act 1959 can be exercised to bring taxable turnovers which have escaped assessment or has been under assessed at a lower rate and this power cannot be utilised to revise or review the turnover either actual or estimated, already assessed, for which purpose, the power of the Assessing Authority could be exercised u/s 55 of the TNGST Act or by the higher authorities, namely, the Deputy or Joint Commissioner. **M/s.Jenway General Vs. CTO, Koyambedu Assessment Circle [2018](Mad) W.P.No.12638 of 2006 DATED 16.03.2018**

Mismatch: The petitioner did not file their objections to the revision notices dated 25.7.2017. Hence, the respondent cannot be faulted in confirming the proposal in the said notices. However, when the revision of assessment was based on the details, which were gathered by the respondent from the Departmental website,, this Court, in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343], laid down certain guidelines as to how the AO have to proceed with the assessment when the revision of assessment is based on mismatch of the details between the returns filed by the dealers and what are reflected in the Departmental website. And that too when the Department has not issued any guidelines to the AO as to how to deal with the assessments when the revision of assessment is made by gathering details from the Departmental website. Had the petitioner sought for those details such as invoice numbers etc,

the AO would have furnished the same and the petitioner could have participated in the assessment proceedings. The Petitioner was responsible for the situation, but considering the fact that appropriate rate of tax has to be collected and that the assessment orders should not be paper orders, this Court is inclined to grant one opportunity to the petitioner to go before the AO. **M/s.N.R.K.Furniture, Vs DCTO, Vellore (South) Assessment Circle [2018] (Mad) Writ Petition Nos.1328 & 1329 of 2018 Dated : 23.1.2018**

Appeal, not filed in time: The petitioner has not preferred any appeal against the assessment order within the time permitted and the present writ petition is undoubtedly a belated attempt made by the petitioner to remedy the breach. The petitioner had produced copies of the returns along with demand draft before the office of the respondent on 21.10.2016 and a copy of the letter delivery book where an endorsement has been made. The respondent cannot reopen the assessment dated 22.4.2015 based on accounts stated to have been submitted later to the passing of the order and in the absence of any petition filed by the petitioner under Section 84 of the said Act. However, the larger concern of this Court is that the impugned assessment order is of the year 2015 and that the AO has not been able to recover tax or penalty as quantified except attaching the petitioner's property. This stalemate will continue for several years leading to further litigation. Hence, this Court is inclined to issue appropriate directions, so that the petitioner can go before the AO and submit their records especially when they state that majority of the work done by the petitioner as a contractor is for the Government Department such as TWAD Board. However, such liberty shall be subject to a condition to pay 25 % of the disputed tax and the benefit of this order will not enure to the petitioner, if the petitioner fails to comply with the condition of payment of 25% of the disputed tax as quantified in the impugned order within the time stipulated. **A.Gopal Vs AC (CT), Omalur Assessment Circle [2018](Mad) Writ Petition No.1401 of 2018 Dated : 23.1.2018**

Mismatch: When there is notice for the alleged mismatch of purchases etc between the returns field by the petitioners and their suppliers take up the

writ petitions for final disposal even at the admission stage is that the assessments have been completed in gross violation of the directions issued by this Court in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343]. The petitioner has been prompt and had submitted their objections for all the three notices. In fact, along with their objections dated 29.8.2016, the petitioner enclosed 374 pages of documents to establish that they scrupulously accounted for all the purchases and sales made during the relevant assessment year. In spite of pointing out both the factual and legal positions by the petitoner, the respondent merely stated that the petitioner had not accounted for the purchases in Annexure I of their monthly return. This Court, in the decision in JKM Graphics Solutions Private Limited, pointed out that a thorough enquiry has to be conducted in consultation with the AO of the other end dealers, for which purpose, the Commissioner has been directed to empower the AO to seek information from the other circles. It is stated that one of the dealers, with whom, the petitioner had purchase transactions, is registered with the respondent as a dealer. Therefore, this Court is at a loss to understand as to why the respondent did not undertake such an exercise before holding the petitioner liable for the alleged unaccounted purchases and sales and reversing the input tax credit. This Court is satisfied that the impugned assessment orders are in gross violation of the directions issued by this Court in the decision in JKM Graphics Solutions Private Limited and that the same call for interference. Stating so, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted to the respondent for a fresh consideration. **Tvl.Sri Velu Agencies, Vs The State Tax officer, Villupuram I Assessment Circle Writ Petition Nos.154 to 156 of 2018 Dated : 08.1.2018**

Rectification of an order: The petitioner field a petition under section 84 and pointed out that in the assessment order, the AO stated that the petitioner paid a sum of Rs.76,500/- as tax whereas the petitioner would submit they paid tax to the tune of Rs.3,76,500/- for the year 2014-15. It is further submitted that the tax deducted at source received for the year 2014-15 from the Government Department to the tune of Rs.12,07,686/-

was also not considered. Therefore, the petitioner wants the AO to verify their books of accounts, adopt a correct gross profit percentage and pass fresh orders. Further, the petitioner has referred to Section 5 of the State Enactment to state that the purchase of goods from unregistered dealers is not levyable to sales tax, as the entire purchase of goods were used in works contract. The AO rejected the petition filed by the petitioner under Section 84 of the said Act. The Court finds that the reasons given by the respondent in the impugned order dated 04.4.2017 are justified because the dealer was not diligent enough in cooperating with the assessment proceedings and that the dealer failed to file his objections to the revision notice dated 06.4.2016. Nevertheless, the Assessing Officer can very well consider the issue as to whether there is any factual error, which, according to the petitioner, has crept in while passing the assessment order. However, the petitioner has to be partially blamed, as he did not cooperate with the assessment proceedings. This Court, in the case of Malladi Drugs & Pharmaceuticals Ltd. Vs. AC (CT), Nandambakkam Assessment Circle [reported in MANU/TN/4009/2015], considered the scope of Section 84 of the said Act and held that the power is neither limited nor circumscribed as understood by the Assessing Officer and as pointed out by the Hon'ble Division Bench of this Court in the case of Khivraj Motors Limited Vs. AC (CT) [WA.Nos.3201 to 3204 of 2004 dated 04.2.2010], an order passed contrary to the provisions of the Statute or judgments of the High Court or the Hon'ble Supreme Court, which is covered on the issue and binding on the Authorities, when not considered or when the factual aspect has not been correctly stated, a mistake would occur on the face of the record. Stating so and considering the above facts, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer, however, subject to a condition of payment 15%. **Tvl.T.Jayaprakash Vs CTO, Pallakode Assessment Circle [2018] (Mad) Writ Petition No.1550 of 2018 Dated : 25.1.2018**

Penalty: For imposition of penalty under Section 27(3) of the said Act, the Assessing Officer should record his satisfaction that escapement was due to wilful non-disclosure and that mere non-disclosure does not automatically amount to levy of

penalty. The Statute contemplates levy of penalty in cases of wilful non-disclosure. The impugned order has been challenged only with regard to levy of penalty and equal time addition and that the petitioner has already paid the tax in full with interest, this Court is inclined to grant one opportunity to the petitioner to go before the AO and accordingly, the writ petition is disposed of with a direction to the petitioner to treat the impugned proceedings as a show cause notice and submit their objections within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. **Rayan Tile Bazaar Vs AC(CT), Vadapalani Assessment Circle [2018] (Mad) Writ Petition No.1568 of 2018 Dated : 25.1.2018**

Show Cause Notice : The Court found, on a reading of the show cause notice, that it does not contain specific allegations and there are vague and unnecessary averments, which are to be eschewed. The learned Government Advocate got instructions from the Assessing Officer and she produced a draft amended notice, and stated that only a draft show cause notice was issued and proper show cause notice is yet to be issued to the petitioner. However, the Hon'ble Court was inclined to accept the stand taken by the respondent and pointed out that the legal position that the show cause notice is nothing but a charge memo and it should contain specific and sharp-pointed allegation and it should not be vague and ambiguous. The noticee should be given proper opportunity to answer the allegation against him, for which purpose, the allegation are required to be precise and to the point. Unnecessary reference to the facts, which are not germane to the issue should be avoided and with this principle in mind, the respondent is directed to issue fresh notice to the petitioner. **M/s. BBC City Park Vs AC (CT) (FAC)T. Nagar Assessment Circle [2018] (Mad) Writ Petition Nos.1642 and 1643 of 2018 Dated : 01.02.2018**

(The author is a Chennai based CharteredAccountant. He can be reached atvvsampat@yahoo.com)

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CASE LAWS - SERVICE TAX

CA. VIJAY ANAND

1. **REFUND OF SERVICE TAX ON SERVICES PROVIDED TO SEZ UNDER NOTIFICATION NO.40/ 2012-S.T. – DENIAL ON THE GROUND THAT NO SERVICE TAX WAS APPLICABLE ON THE SERVICES CONCERNED – NOT SUSTAINABLE**

   In INVESCO (Hyderabad) Pvt. Ltd. V. CCE& ST., Hyderabad-IV, 2018 (12) GSTL 98 (Tri.-Hyd.), appellant is situated in an SEZ unit and claimed refund of the amount of service tax paid by them under the Head "Business Support Services" under Notification No.40/2012-ST dated 20.06.2012 which was rejected by the lower authorities on two grounds: (i) that the description of the services on the invoices of Xerox India Ltd is not acceptable as the service provider is required to mention the actual service description in the invoices raised by them and (ii) the appellant should avail the exemption of receiving the services without payment service tax.On appeal, the Tribunal observed as under:

1. The documents/invoices raised by the service provider are for the "support services of business or commerce" which are for photostat copying of the documents as per the agreement entered with the appellant and is not for supply of machines or the printer. This will invalidate the findings of the lower authorities that the description of the services is not acceptable.

2. As regards other issue that the service provider need not have paid the service tax liability as being in the authorised list, Notification No 40/ 2012-ST dated 20.06.2012 comes in two parts and is for the service provider as well as the service recipient. If the service recipient is an SEZ Unit, he should pay service tax to the service provider and claim the refund of the amount. In the instant case, the fact that the appellant is an SEZ unit is not disputed and the receipt of the services is also not disputed as also the payment of service tax to the service provider.

3. In the absence of any adverse findings on the aforesaid, the appellant is eligible for claiming the refund of the service tax paid by the service provider which is in consonance with the law.

Hence, the appeal was allowed.

2. <u>CHIT TRANSACTION – NON TAXABILITY BETWEEN 2012 AND 2015 – AMENDMENT IN 2015 CANNOT BE APPLIED RETROSPECTIVELY</u>

In All Kerala Association of Chit Funds Vs. UOI, 2018 (12) GSTL 142 (Ker.),appeals/writ petitions were filed withrespect to the liability of chit transactions, to service tax as arisingfrom the Finance Act, 1994during three periods,in so far as the amendments made to the Finance Act, 1994. Theyare, pre-2012, between 2012 to 2015 and post-2015.The history of the litigation are as under:-

i. When chit fund business were sought to be levied with service tax, a batch of Writ Petitions were filed before the Andhra Pradesh High Court in which it was held, in A.P. Federation of Chit Funds v. UOI 2009 (13) STR 350 (A.P.) that the chit fund business would not be covered under the Finance Act, 1994.

ii. Special Leave Petitions were filed before the Supreme Court against the above order of the Andhra Pradesh High Court, was converted into Civil Appeals.

iii. During the pendency of the above appeals with Supreme Court, a batch of Writ Petitions were filed before the Kerala High Court Court wherein a Single Judge, in All Kerala Association of Chit Funds v. UOI 2013 (29) STR 557 (Ker.), differed from the findings of the Andhra Pradesh High Court and held in favour of the Revenue by decision reported.

iv. Subsequently the Supreme Court affirmed the decision of the Andhra Pradesh High Court in UOI v. Margadarshi Chit Funds Private Limited 2017 (3) GSTL 3 (S.C.) and overruled the decision of the Kerala High Court.

v. Subsequently,further writ petitions filed were allowed, following the decision of the Honourable Supreme Court. One such judgment is challenged by the Revenue contending that the Apex Court has not considered the amendment of 2012.

The high court observed as under:-

1. Chit transactions were not assessed till 01-06-2007, when an amendment was made to Section 65(12)(v), deleting the

words "but does not include cash management". The Revenue then issued notices to the establishments carrying on chit business demanding tax under the Finance Act, 1994, which led to theaforesaid litigation.

2. Andhra Pradesh High Court held that the deletion of 'cash management' from the inclusive definition would not enable the chit transactions to be taxed, since the said transaction would not come under the definition of cash management and this view was affirmed by the Supreme Court.

3. In 2012, when the negative list of services were introduced, transaction inmoney or actionable claim was specifically excluded from the list of services.

4. The issueagitated by the Revenue is as to whether between 2012 and 2015there could be tax levied on the chit transactions deeming it to be aservice, which has not been excluded in the definition nor includedin the negative list. This issue has to be answered in the negative in the light of the observations of the Supreme Court in UOI v. Margadarshi Chit Funds Private Limited 2017 (3) GSTL 3 (S.C.) wherein it was held upto June 14, 2007, chit fund business was not exigible to service tax and similar was the case from July 01, 2012 to June 14, 2015.

5. Consequent to the insertion of an Explanation to Section 65B(44), w.e.f. 15.06.2015, to specifically exclude services by a foreman of chit fund for conducting ororganizing a chit in any manner.Hence, the chit transaction becomes liable to tax under theFinance Act, 1994, from 2015 onwards.

6. Revenue's contention that the aforesaid amendment ismerely clarificatory in nature and would be applicable from 2012onwards is unacceptable, going by the decision of the Honourable Supreme Court.

7. Hence, the amendment made in 2015 cannot be said tobe clarificatory and there can be no retrospective operation given tosuch amendment. The legislature felt the need for inclusion of thetransactions within the fold of service and hence amended theFinance Act, 1994 by Finance Act, 2015.

Hence,writ appeals/writ petitionsfiled by the Revenue were dismissed and theother Writ Appeals\Writ Petitions were allowed.

3. <u>DEPUTATION OF EMPLOYEES BY FOREIGN BASED ENTITY – NO REVERSE CHARGE MECHANISM APPLICABLE TO INDIAN BRANCH</u>

In Lea International Ltd. V. CST. Delhi, 2018 (12) GSTL 166 (Tri.-Del.)

the appellant is a project office of M/s Lea International Limited, Canada (LIL) and entered into agreements with clients based in India for providing engineering consultancy services and technical assistance in various road related projects for which the considerations are fully credited to parent company at Canada directly, despite the service tax being paid on such consultancy services. However, for the purpose of compliance with the local tax laws, the full consideration is accounted as the receipt from Indian clients in their accounts in India and expenditure booked for the services rendered to LIL. The adjudicating authority confirmed the demand, under reverse charge mechanism, on the appellants on the following:-

i. Expenditure towards consultancy paid to LIL that is booked in the books of account of the project office; and

ii. Manpower supply in respect of the staff deputed by LIL to India to render the services in terms of agreement with the Indian clients.

On appeal, the Tribunal observed as under:-

1. The appellants paid service tax on the full consideration paid by the Indian service recipient to LIL, Canada, which is captured in the accounts of the appellant and further adjusted in the accounts of LIL, Canada. This fact has not been disputed and is recorded in the show cause notice. However, certain expenditure shown in the same books of accounts under the category of consultancy fee and technical fee, which is again reflected in the accounts of LIL, Canada, was sought to be taxed on reverse charge basis at the hands of the appellant.

2. The above liability cannot be sustained on account of the following:-

(a) The whole of the income shown in the books of accounts of the appellant has suffered tax under the category of consultancy engineering service. An expenditure, which is part of the same accounting for income, cannot be taxed for the same service, even under reverse charge tax.

(b) The appellant has no agreement or arrangement with LIL, Canada to receive anyconsultancy service nor has any such allegation been made. LIL, Canada procured such consultancy service from various consultants, which in turn were used for rendering service to Indian clients. Such services were effectively managed and utilized by LIL, Canada and is expenditure for LIL, Canada, which is also reflected in the appellant's accounts as per the requirement.

3. The fact that full income on consultancy servicehas suffered service tax, the expenditure to provide such service cannot be put to service tax even under reverse charge basis. There is no basis either on fact or law to sustain such confirmation.

4. W.r.t. the issue of service tax liability under manpower supply, the Allahabad High Court in Commissioner v. Computer Science Corporation India Pvt. Ltd. 2015 (37) STR 62 (All.) held that in such arrangement, the deputation of employee for executing work cannot be considered as a manpower supply and that the employer cannot be considered as a manpower supply agency.

5. Neither the appellant nor LIL, Canada can be considered as a manpower supply agency. In such situation, the tax liability to said category cannot be sustained.

Hence, the appeal was allowed with consequential relief.

4. GST – ADVANCE RULING - SUPPLY OF GOODS TO INTERNATIONAL OUTBOUND PASSENGERS IN DUTY FREE SHOPS - LIABLE

In RE: Rod Retail Pvt. Ltd. 2018 (12) GSTL 206(A.A.R.-GST), the applicant is in the business of retail sale of sunglasses and is having a retail outlet at Terminal 3 (International Departure), Indira Gandhi International Airport, New Delhi. The present application relates to the question arising from the transaction conducted from the said outlet, wherefrom sales are made to the International passengers travelling to outside India against a valid international boarding pass. However, no supply is made to a domestic passenger travelling to a domestic destination on a transit International flight, no supply to such passengers holding a domestic boarding pass is made by the applicant.

The issue is whether the location of the retail outlet of the applicant in the Security Hold Area of the International departure is outside India though geographically it is within the territory of India. The said area is after crossing the Customs Frontier of India and is claimed to be situated outside the territory of India. Hence, the applicant raised a question as to whether the supply of sunglasses from the retail outlet of the applicant at Terminal 3, IGI Airport (International Departure), New Delhi, to outbound

international passengers against the international boarding pass is liable to SGST under the DGST Act, 2017 and CGST under the CGST Act, 2017 or is it a zero rated "export" supply within the meaning of Section 2(23) r/w Section 2(5) of the IGST Act, 2017?

The authority observed as under:-

1. The issue for decision is whether the supply of goods made to international outbound passengers holding international boarding pass from the retail outlet of the applicant which is located in the Security Hold Area of the IGI International Airport, Terminal-3, and which is claimed to be beyond Customs Frontiers of India, should be considered as zero rated supply, being export of goods, or the same should be subjected to GST @ 28%, being presently paid by the applicant.

2. Prior to the implementation of GST w.e.f. 01.07.2017, Article 269(1) of the Constitution empowered the Central Government, **and not the State Government,** to levy a tax on sale or purchase of goods in the course of inter-state trade or commerce was levied by Central Government and not by the State Government and Article 286(1) prohibited the State Governmentto levy tax on sale or purchase of goods in the course of import into, or export of the goods out of, the territory of India. Further, Section 5(1) of Central Sales Tax Act, 1956 defined that a sale or purchase of goods shall be deemed to take place in the course of export of the goods out of territory of India, if the sale or purchase takes place after the goods have crossed the Customs Frontier of India. Since, the sale of goods from duty free shops at International Airports to passengers was taking place beyond customs frontier of India, no State Government was competent to levy VAT on such goods.

3. The above analogy was drawn from the decisions of the Supreme Court in Hotel Ashoka(Indian Tourism Development Corpn. Ltd.) V. Asst. Commissioner of Commercial Taxes 2012 (276) ELT 433 (S.C.)

4. The abovementioned decisions of the Hon'ble Supreme Court will not apply in the present case as the issue is whether the said duty free shops are outside India i.e. whether they are "beyond airspace on territorial waters of India" which was not the case in those decisions.

5. As per Section 2(5) of the IGST Act 2017, export of goods takes place only when goods are taken out to a place outside India. Further, India is defined under Section 2(27) of the Customs Act, 1962 as "India includes the territorial waters of India".

6. India is defined under Section 2(56) of the CGST Act as "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.

7. Hence, the goods can be said to be exported only when they cross the territorial waters of India and the goods cannot be called to be exported, merely on crossing the Customs Frontiers of India.

8. In Collector of Customs, Calcutta v. Sun Industries 1988 (35) ELT 241 (S.C.), the Supreme Court held that under Section 2(18) of the Customs Act, 1962, the export of goods out of India was completed when the ship had passed beyond the territorial waters of India. Since, definition of "export" under Section 2(18) of the Customs Act, 1962 and the definition under Section 2(5) of the IGST Act, 2017 are exactly the same, the ratio of judgment of Hon'ble Supreme Court of India in the abovementioned case is squarely applicable in the present case also.

Arising out of the above, the authority held that the supply of goods to the International passengers going abroad by the applicant from their retail outlet situated in the Security Hold Area of the Terminal-3 of IGI Airport, New Delhi may be taking place beyond Customs Frontiers of India as defined under Section 2(4) of the IGST Act, 2017, but the same is not outside India, as claimed by the applicant but the same is within the territory of India as defined under Section 2(56) of the CGST Act, 2017 and Section 2(27) of the Customs Act, 1962 and such supply cannot be called "export" under Section 2(5) of the IGST Act, 2017 or "zero rated supply" under Section 2(23) and Section 16(1) of the IGST Act, 2017 and the applicant is required to pay GST at the applicable rates.

5. GST – ADVANCE RULING-RECOVERY OF FOOD CHARGES FROM EMPLOYEESFOR SUPPLY IN CANTEEN – TAXABLE AS A SUPPLY

In Re: Caltech Polymers Pvt. Ltd. 2018 (12) GSTL 350 (AAR.-GST), the applicant is engaged in the manufacture and sale of footwear and are providing canteen services u/s 46 of the Factories Act, 1948 (as they have more than 250 employees) exclusively for their employees. They are incurring the canteen running expenses and are recovering the same from its employees without any profit margin, whose factual matrix is as under:-

a) The space for the canteen is provided by the applicant, inside the factory premises.

b) The cook is employed by the applicant and is paid monthly salary.

c) The vegetables and other items required for preparing the food items are purchased by the applicant directly from the suppliers.

d) The number of times, the Canteen facility is availed, each day, by the employees is tracked on a daily basis.

e) Based on the details above, the expenditure incurred by the applicant on the vegetables and other items required for preparation of food is recovered from the employees, as a deduction from their monthly salary, in proportion to the foods consumed by them.

f) The company does not make any profit while recovering the cost of the food items, from the employees. Only the actual cost incurred for the food items is recovered from the employees.

The applicant preferred an application for Advance Ruling as to whether the reimbursement of food expenses from employees for the canteen provided by applicant comes under the definition of outward supplies as taxable under GST Act.The authority observed as under:

1. It is true that in the pre-GST period, vide Sl No.19 and 19A of Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No.14/2013-Service Tax dated 22.10.2013 the 'services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), including a canteen having the facility of air-conditioning or central air-heating at any time during the year' was exempted from service tax. But, there is no similar provision under the GST laws.

2. A plain reading of the term "business" as defined in Section 2(17) of the GSTAct indicates that the supply of foodby the applicant to its employees would definitely come under clause

(b) of Section 2(17) as a transactionincidental or ancillary to the main business.

3. Schedule II to the GSTAct describes the activities to be treated as supply of goods or supply ofservices, irrespective of a profit motive or not.

4. Mere fact that the applicant recovers the cost of food from its employees would satisfy the definition of consideration as per Section 2(31) of the GST Act, 2017, despite the absence of profit motive.

5. Consequently, there is a supply as provided in Section 7(1)(a) of the GST Act, 2017 and the applicant would come under the definition of supplier as per section 2(105)of the GST Act, 2017.

Hence, the authority held that the recovery of food expenses from the employees for the canteen servicesprovided by company would come under the definition of 'outward supply' as section 2(83) of the Act,2017, and therefore, taxable as a supply of service under GST.

6. GST – ADVANCE RULING – QUESTION AS TO THE PLACE OF SUPPLY NOT DISENTITLED – EDUCATION ADVISORY SERVICES – INTERMEDIARY SERVICE – NOT COVERED UNDER EXPORT OF SERVICE

In RE: Global Reach Education Services Pvt. Ltd. 2018(12)GSTL387(AAR.-GST), the applicant provides overseas education advisory whereby they promote the courses of foreign universities among prospective studentsfor which they receive consideration in convertible foreign exchange and sought a ruling as to whether the services provided to the Universities abroad is to be considered "export" within the meaning of section 2(6) of the IGST Act, and, therefore, a zero-rated supply under the CGST/WBGST Act 2017.

The authority observed as under:-

1. It is clear from the perusal of the relevant agreements that the main service provided by the applicant is facilitating recruitment of students and the consideration is paid as commission on the basis of course fee and recruitment through the applicant. Promotion of the courses is incidental to the above principal supply. While providing the above service the applicant is subject to audit by the University, which includes fulfilling recruitment targets and the University

will review the applicant's performance with respect to recruitment targets achieved. The applicant cannot claim any consideration for its promotional activity unless the students get enrolled through it.

2. If the students get enrolled directly by the University through distant education or online services, the applicant will not be paid any consideration whether or not it has provided any promotional service &the applicant is not allowed to undertake any promotional or advertising activity without prior written approval from the University nor is permitted to receive any fees or charges from the students or deduct anything from the charges or fees payable by the students to the University.

3. The applicant's submission that payment of consideration based on recruitment is merely the mechanics for determining the quantum of consideration payable and has no bearing on the applicant's standing as an independent service provider cannot be accepted. If promotion of university courses were the principal supply, the applicant should have been remunerated for its promotional activity no matter whether it facilitates recruitment or not.

4. In view of the fact that the applicant receives 'commission' based on recruitment/enrolment through it, the principal supply is clearly facilitating the foreign university in recruitment/ enrolment with promotional services ancillary to the principal supply and should be reckoned as an intermediary service provider.

5. The place of supply of an intermediary service provider shall be determined under section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act, which is the territory of India.

6. Arising out of the above, the condition under section 2(6)(iii) of the IGST Act is not satisfied and the applicant's service to the foreign universities does not qualify as "Export of Services", and is, therefore, taxable under the GST Act.

Hence, the authority ruled the services of the applicant are not export of service and, consequently, are taxable under the GST Act.

7. **GST – ADVANCE RULING – WORK ORDER ISSUED BY RAILWAYS FOR REPAIRS, MAINTENANCE AND FITTING OUT OF IMMOVABLE PROPERTY– COMPOSITE SUPPLY OF WORKS CONTRACT LEVIABLE TO TAX AT 18%**

   In RE:SreepatiRanjanGope& Sons 2018(12) GSTL.392 (AAR-GST), the applicant is an enlisted contractor engaged by the Railways formaintenance work of railway tracks, wants a ruling on the Classification and Rate ofTax when maintenance of railways tracks is done by them by providing contractor'slabour only in cases where the Railways supply materials free of cost and whenmaintenance of railways tracks is done by them by providing, both contractor'smaterial and labour. The authority observed as under:-

1. The applicant is a supplier of services as per work order issued for execution by the Railways. From examination of the LOA and the annexed Schedules it is clear that the work to be executed involves repair, maintenance and fitting out of immovable property, namely, railway tracks, and also transfer of property in goods in course thereof. It is, therefore, a "Composite Supply" of labour and goods in the nature of works contract, as defined under Section 2 (119) of the GST Act, and is, therefore,classifiable under (ii) of column 3 [Description of Service] of Heading 9954(Construction services) of column 2 under Serial No 3 of column 1 of the Table in Notification No. 11/2017-CT (Rate) dated 28/06/2017 under the CGST Act, 2017.

2. In the above Notification, in Annexure: Scheme of Classification of Services appended with the said Notification No. further classifies Heading 9954 under Section 5 "Construction Services". Group 99542 under Heading 9954 classifies "General Construction of civil engineering works" and Sub-group 995421 classifies "General Construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels". Sub-Group 995429 classifies "Services involving repair, alterations, additions, replacements, renovations,maintenance or remodeling of the constructions covered above.

3. After a thorough perusal of the LOA it is seen that the Services rendered by the applicant are to be classified under

SAC (Service Code Tariff) Heading 9954, Group99542, Sub-group 995429.

4. The rate Notification, along with its amendments on various dates, deals with theTariff rate of tax as well as the effective rate of tax at reduced rates subject to specificlaid down conditions. None of the amendments, whereby the effective rate of tax is ata rate lower than the Tariff rate under specifically laid down conditions are applicablein this case.

5. The applicant's claim of GST rate of5% for construction services for composite supply of works contracts involvingpredominantly earth work (that is, constituting more that 75% of the value of servicesprovided to Central Government cannot apply as the services of the applicant involves cleaning, surface preparation and painting ofthe rails, welding of joints, fabrication and fixing of guard rails, dressing and boxing ofballast, piling of Bullah, and other maintenance related work and that only a minor fraction ofwhich can be described as earth work.

6. The applicant's claim of exemption underNotification No.12/2017-CT (Rate) dated 28/06/2017 under the CGST Act, 2017and as amended on 25.01.2018 cannot sustain too as the condition for such exemption requires a composite supply (wherein the value of the goods suppliedis not more than 25% of the total value of the supply) to be providedtoCentral Government by way of any activity in relation to any function entrusted to aPanchayat under article 243G of the Constitution or in relation to any functionentrusted to a Municipality under article 243W of the Constitution, which is not in existence in the instant case.

Hence, the authority ruled that the services provided by the applicant would fall under the ambit of works contract service, as defined under Section 2 (119) ofthe GST Act, of maintaining existing railway tracks, which is taxable @ 18% underserial no. 3(ii) of Notification No. 11/2017-CT (Rate) dated 28/06/2017 with the appropriate SAC (Service Code Tariff) is of Heading 9954, Group 99542,Sub-group 995429.

(The author is a Chennai based CharteredAccountant. He can be reached at reached atanandvis@gmail.com)

CASE STUDIES ON GOODS & SERVICE TAX FOR GROUP DISCUSSION PRESENTED IN 19TH ANNUAL RESIDENTIAL CONFERENCE AT KANYAKUMARI

- CA. SANKARANARAYANAN

Case Study 1:

Assessee is a Printing press with state of the art printing facility in Tamil Nadu. They print text books both for educational and other purposes for their clients. They serve both Indian as well as International market.

Different methods of operations were as follows;

a. Client will supply the 'content' to be printed along with specifications of output book. Assessee is free to source the material and deliver the output of printed books.

b. Client will supply the 'content' as well as the paper and material on which the content is to be printed. Assessee finishes and delivers the output of printed books.

c. Client will give an idea, Assessee will develop the content, procure materials, print and deliver the output

Assessee was Taxable under Central Excise with HSN 4802 Paperboard & Chapter 49 – Printed Books. Under VAT they were taxable as well, with an exception of educational books.

Discuss GST applicability on the Assessee

Case Study 2:

Assessee is a private port located in Goa. They are providing a wide gamut of Services to their clients ranging from

a. Marine related activities viz.,

i. Pilotage

ii. Tug-Hire

b. Cargo related services viz.,

i. Stevedoring

ii. Crane Hire

iii. Weighment

iv. Handling

v. Container Stuffing & Wrapping

c. Railway related services viz.,

i. Inter carting

ii. Siding

iii. Tarpaulin

d. Other Services

i. Customs Documentation

ii. Bagging & Stitching

iii. Security

99% of their clients are located outside the state of Goa. Client approaches us for an opinion on GST applicability and the intricacies involved in the same.

Case Study 3:

M/s. WF Inc, has a branch in Chennai, India which is rendering Information Technology (IT) and Information Technology Enabled Services (ITES) to its Head Office and other parts of the entity. The Head Office is in USA.

The unit in Chennai is an 100% Export Oriented Unit (EOU), with only their Head Office and other branches / subsidiaries being their customer. Under Service Tax, the unit was not paying Service Tax

Client wishes to know the applicability of GST on the business carried on by them

Case Study 4:

MRE (P) Ltd functioning since 1987 is an Indo-American Joint Venture for manufacture of Power Transformer. They have the technical and financial collaboration MRE Inc. which holds 49% Equity in this company.

a. Apart from manufacturing products for supplies to Indian OEs, they also act as agent for MRE Inc for promoting sale of their Products to Indian Customers. The products are directly supplied by MRE Inc to Customers in India and MRE (P)Ltd. get sales commission on these supplies.

b. Similarly, MRE Inc acts as agent for MRE (P) Ltd., for selling its goods in the European market. For this service MRE Inc is being separately remunerated through Sales Commission from Indian entity.

c. Also,in the event of the components supplied to the European Market, by MRE (P) Ltd., running into any technical issues, the representatives of MRE Inc will attend to the issue. This will be billed as technical support services by MRE Inc to MRE (P) Ltd.

Elucidate the applicability of GST on above transactions as well as eligibility of ITC to the client.

Case Study 5:

M/s Completely Confused Limited, approaches you with the following questions on Transitional Provisions under GST.

a. Since they are a manufacturer of goods and filing ER-1 monthly return, they have a balance of Rs. 18 lakhs in CENVAT (unutilised) and PLA of Rs. 53 lakhs. Can these be converted in to Transitionary ITC under GST

b. A Refund application has been made under erstwhile Cenvat Credit rules, 2004 – Rule 5 by them for Rs. 21 lakhs, out which Rs. 11 lakhs has been accepted and the remaining was not given as refund. Refund was applied on 1st February 2017 and the order for acceptance (partial) was passed on 1st August 2017

c. They have filed an appeal during January 2017 paying a Pre-Deposit of Rs. 10 lakhs with CESTAT Chennai. The outcome of the appeal was in favour of the assessee and the order was pronounced in August 2017. What is the plight of the Pre-Deposit?

d. The company also has a division which is into Dealership of Cars. Prior to 30th June 2017, they had a balance of Entry Tax, paid on such vehicles. How this has to be dealt with?

e. A Computer Server was purchased in August 2015 for Manufacturing monitoring purpose through a specialised software. CENVAT Credit of Rs. 12 lakhs was availed on the same. This Computer was retired and sold on 30th September 2017. Discuss the implication of GST on this transaction.

Case Study 6:

Assessee Mr. CA does the following transactions and is desirous of knowing whether CGST & SGST or IGST is applicable on the same and the place of supply;

a. Mr. A is a registered dealer in Andhra Pradesh, is visiting Chennai and is purchasing goods from Mr. CA and the goods are delivered by hand and across the counter.

b. Mr. B, located in Chennai, is purchasing goods centrally for all its branches across India. Mr. B has placed an order with Mr. CA for Supplying goods to its branches in

Andhra Pradesh, Karnataka & Maharashtra. Mr. B has instructed Mr. CA to bill their Chennai Office and Ship the Goods to respective locations.

c. Mr. J is a Manufacturer located in Bengaluru, supplying goods for Mr. CA. Mr. J has been asked to develop a Tool by Mr. CA, which is to be exclusively used only for Mr. CA's output. Mr. CA, to maintain exclusivity, has asked Mr. J toInvoice this Tool to them, but retain possession for manufacturing.

i. Discuss Place of Supply of Mr. J's Invoice to Mr. CA

ii. Also, whether this tooling cost is to be included for valuation purposes when Mr. J is supplying to Mr. CA

Case Study 7:

a. Mr. FB, in the course of delivery of his inputs and outputs, is availing services of Goods Transport Agencies. Few are charging a GST of 12% and few are not charging GST. Discuss whether

i. GST is payable by Mr. FB

ii. On the GST paid is Mr. FB eligible for Input Tax Credit

b. In case of Reverse Charge under Section 9(3) or 9(4) of the CGST Act, 2017 discuss

i. Whether Input Tax Credit can be availed

ii. If Yes, when the same shall be availed, In the Month of Liability or in the Month of Payment

c. Company A is having its Corporate Office only in Tamil Nadu. It is present in all the other States of South India where they have manufacturing activities. Common Services such as Statutory Audit Fees, Legal Consultancy Services, Advertisements & Sales Promotion are incurred at Corporate Office.Few other common services are incurred at the respective locations. In the light of the above address the below;

i. Is it mandatory to register as an Input Service Distributor, if yes where?

ii. Is the Credit Eligible only at the place where it is incurred

iii. Can an ISD pay GST under Reverse Charge

Case Study 8:

a. An Infrastructure company is sending a road testing equipment across various locations of the country for testing. Can they do so without raising an Invoice under GST.

b. X Ltd., dealers in Pipes, are selling their used Motor Vehicle purchased in July 2015 during November 2017. Advice on the applicability of GST.

c. AV Ltd., is selling FMCG products through their dealership network. Goods supplied by them are covered under 5% and 12% rate of GST. Their products are first supplied to their dealers who in turn supply to retailers and retailers supply it to the end customers. The retailers are given an Incentive on achieving sales targets. But these are not directly given but are routed through the Dealers. AV Ltd. wants to know whether this passing of incentive would impact their Transaction Value for valuation under GST.

d. JMC Ltd. is in to trading of exempted goods. These goods were sold locally as well as exported. They have following questions

i. Should they obtain an LUT for exporting goods

ii. Can they avail Input Tax Credit on their Inputs, Input Services or Capital Goods

iii. Are they eligible for Refund of such Input Tax Credit

iv. Can they opt for payment of GST on export supplies

(The author is a Chartered Accountant, specialised in GST, practicing in Chennai and presented the case studies in the group discussion held in the 19th Annual residential Conference at Kanyakumari in January, 2018. The author has been requested to provide answers for the case studies and the same will be provided as and when received.)

RECENT AMENDMENTS IN THE INSOLVENCY AND BANKRUPTCY CODE, 2016

CS. S. DHANAPAL

Since its inception, the IBC, 2016 has been undergoing rampant changes to address the needs of the Corporates and its stakeholders. In thisarticle on the IBC, 2016, we present to you the significant changes that have been notified in the legal periphery of the IBC, 2016 vide the Ordinance passed on 06.06.2018.

The Ordinance came into effect immediately, i.e. from 06.06.2018.

OPPORTUNITIES TO HOME-BUYERS

- In a major relief to home-buyers, the definition of financial debt has been amended to the effect that home-buyers have now been included within the ambit of financial creditors, thereby enabling home-buyers to initiate CIRP of a Company in the event of a default.

- Further, home-buyers (if their number exceeds a number to be prescribed) will also have a right to be represented on the Committee of Creditors (COC) through appointment of an Insolvency professional, other than the Interim Resolution Professional (IRP), who shall be appointed by an order of the NCLT on application of the IRP, prior to first meeting of the COC.

- The Insolvency Professional so appointed shall have the right to attend the COC meetings and vote thereat in accordance with the instructions of the home-buyers to the extent of their voting share.

This move is expected to benefit the large community of home-buyers who prior to the amendment did not have any right in the CIRP process other than making a claim and awaiting its settlement if it were to happen eventually. The home-buyers have now been brought on par with other unsecured financial creditors empowering them with the right to be represented on the COC and have

a say in the decision making process as well as the right to even initiate the CIRP in the event of default by the builder / developer (corporate debtor).

RELIEF TO MSME

- Relaxation to Resolution Applicants - The following restrictions under Section 29A shall not apply in case of MSMEs for a person / entity to be eligible as a Resolution Applicant:

- A person or entity (other than a financial entity who is not a related party to the corporate debtor) who at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor and the amount remains overdue as on date of submission of the resolution plan, and

- A person / entity who has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part.

  Persons entities suffering from the above disabilities may still submit a resolution plan for a MSME under CIRP.

- Exemption from applicability of specified provisions of the Code – Central Government may by notification exempt the applicability of specified provisions of the Code to MSME or specify their applicability with such modifications as notified.

APPLICABILITY OF LIMITATION ACT, 1963

- The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the National Company Law Tribunal, the

National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

AMENDMENT OF SECTION 434 OF COMPANIES ACT, 2013 (TRANSITIONAL PROVISIONS)

Any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016. This amendment provides an opportunity whereby parties involved in a winding up proceeding may transfer such case for being taken up as a CIRP proceeding before the NCLT.

AMENDMENTS RELATING TO FILING OF APPLICATION FOR CIRP

- As stated above, home-buyers can now initiate CIRP of a Corporate Debtor in the event of a default in the capacity as financial creditors.

- For operational creditors, the requirement of producing a certificate from financial institution maintaining accounts of the operational creditor confirming that there is no payment of the unpaid operational debt by the corporate debtor shall arise only in the event of its availability. Operational Creditors may furnish a copy of record maintained by an information utility or any other proof (to be prescribed by Rules) confirming that there is no payment of an unpaid operational debt by the corporate debtor, as available, in support of their CIRP application.

- Corporate debtors initiating their own CIRP will now have to seek and file approval of their shareholders by means of Special Resolution, in case of Companies or approval of at least 3/4thof the total number of partners in case of LLPs along with the application for the CIRP. This may prove to be time consuming, specially for listed companies.

WITHDRAWAL OF APPLICATION FILED FOR CIRP

- An Application filed before NCLT for CIRP of a Corporate Debtor may be withdrawn with approval of 90% of voting share of the COC.

- The detailed procedure for same shall be prescribed by Rules.

AMENDMENTS RELATING TO APPROVAL OF COC

Relaxation has been provided in matters which require approval of COC by easing the approval requirement from erstwhile 75% to 66%. The following decisions may now be taken with the approval of COC accorded by a voting percentage of 66 which earlier required a 75% majority:

- Extension of CIR period beyond 180 days till 270 days

- Appointment of RP in first COC

- All actions by RP during CIRP as specified in Section 28(1)

- Replacement of RP with another RP (new RP to give written consent)

- Approval of resolution plan

- Decision to liquidate the CD during CIRP (no percentage specified prior to amendment).

For routine matters, i.e. matters which do not require a specific majority as per the Code, simple majority of 51% is sufficient against erstwhile requirement of 75%.

AMENDMENTS RELATING TO SUBMISSION AND APPROVAL OF RESOLUTION PLAN

- Resolution applicant is required to submit an affidavit confirming satisfaction of requirements of Section 29A to the RP along with the resolution plan.

- Where in terms of the Resolution Plan, Shareholders' approval is required, under any law, for a particular action under the Resolution Plan, the approval shall be deemed to have been given for the purpose of implementation of the resolution plan.

- Resolution Applicant is required to obtain the necessary approvals required under any law for the time being in force within a period of 1 year

from the date of approval of the resolution plan by the NCLT or within such period as provided for in such law, whichever is later.

- NCLT has been vested with the responsibility to ensure that a Plan being approved by it is capable of being implemented, i.e. before approving a resolution plan, NCLT has to satisfy itself that the resolution plan has provisions for its effective implementation.

- Amended Section 29A shall apply prospectively, i.e. only to those resolution applicants who have not submitted any resolution plan till 06.06.2018.

AMENDMENTS RELATING TO CORPORATE GUARANTORS

- Definition of Corporate Guarantor has been introduced in the Code to mean a corporate person who is surety in a contract of guarantee to a corporate debtor.

- Moratorium during CIRP shall not extend to a surety in a contract of guarantee to a corporate debtor, i.e. to both personal as well as corporate guarantors. Creditors may invoke the guarantee to recover their dues and may also proceed against the guarantors during the CIRP if the recovery is not successful as the protection of moratorium as available to the Corporate Debtor shall not be available to the guarantors.

- Further, Section 61 of the Code has been amended to provide that where a CIRP or liquidation proceeding of a corporate debtor is pending before theNCLT, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the NCLT. Prior to the amendment, the Section had provision only for bankruptcy of a personal guarantor. With the amendment, corporate guarantors have also been included within the ambit of Section 61 to the effect that application for CIRP or liquidation of Corporate Guarantors of a Corporate Debtor shall also be filed with the NCLT.

AMENDMENTS RELATING TO INSOLVENCY PROFESSIONALS ACTING AS IRP / RP / LIQUIDATORS

- Tenure of IRP shall continue till appointment of RP against erstwhile fixed tenure of 30 days.

- For appointment of RP (IRP continues as RP or new RP is appointed) written consent of RP is required in a format to be specified.

- Written approval of RP is required prior to his appointment as liquidator of the CD by order of NCLT. Prior to the amendment, the RP had no means to opt out of the appointment. Further, where the RP does not consent to be so appointed as the liquidator, NCLT is required to make a reference to the IBBI who shall propose the name of another insolvency professional along with written consent, in the form to be specified, from the insolvency professional to the appointed as the liquidator. This provides an avenue to the RP to decide whether or not to seek appointment as liquidator of the Corporate Debtor.

- IRP/RP shall be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor. The Resolution Professional vested with the powers of management of the corporate debtor has been made responsible for its legal compliances also. This is a humongous responsibility cast on an individual who had no association with the company prior to his appointment to understand and comply with all the applicable laws apart from discharging various other responsibilities cast upon him to the various stakeholders associated with the Corporate Debtor and to report to the IBBI all in a time bound manner.

- Where a resolution plan is submitted by a resolution applicant for a corporate debtor, RP has to continue to manage the operations of the CD even after conclusion of CIRP till passing of order by NCLT u/s 31. This amendment will ensure seamless transition of the Company from CIRP to implementation of Resolution Plan or CIRP to liquidation as the case may be

(The author is a Chennai based Company Secretary. He can be reached at csdhanapal@gmail.com)

SERVICE TAX& EXCISE LAWS

CA. DEBASIS NAYAK

1. No additional pre deposit of 10% is required to be made when filing the second appeal before the CESTAT

In case *of M/S. SANTANI SALES ORGANISATION VS. CESTAT, DELHI & OTHERS W.P.(C)-4551/ 2017*questions raised are

i. Whether as per Section 35F of the Central Excise Act, 1944 the petitioner on filing of second appeal before Tribunal is required to make an additional pre-deposit of 10% of the duty and penalty in dispute, over and above 7.5% pre-deposit made for filing of first appeal before the Commissioner (Appeals)?

ii. Whether requirement of pre-deposit mandated vide Section 35F of the C.E. Act, does not apply to service tax appeals preferred under Sections 85 and 86 of the Finance Act, 1994?

High Court held that:

i. Section 35F of the C.E. Act should not be construed by adding or substituting words to clarify and ironout assumed doubts. Intent, as cogently reflected in simple words, is that the assessee on second appeal should pre-deposit 10% of the total tax and penalty subject matter of the appeal. It is not to ignore the pre-deposit of 7.5% already made to file first appeal. There is logic in increasing pre-deposit by 2.5% when second appeal is filed, but we would be adding words to the plain and unambiguous provision if we stipulate that 10% pre-deposit will be over and above 7.5% pre-deposit made at the time of the first appeal. Expression or words 17.5% or an additional 10% deposit instead of using mere 10% pre deposit have not been used. Appropriateness of the meaning attached to 10% pre-deposit in the context is apparent. Further the court also quashed the circular dated 27th April 2017 issued by the Tribunal.

ii. Section 86 of the Finance Act provides for an appeal before the Tribunal and Section 83 of the Finance Act makes Section 35F of the C.E. Act equally applicable. Section 35F of the C.E. Act is the provision which relate to pre-deposit, a mandatory provision for the appeal to be maintainable and heard. If the interpretation given by petitioner is accepted we would be rendering a part of Section 83 of the Finance Act referring to Section 35F of the C.E. Act altogether otiose and redundant. Second contention raised by the petitioner is accordingly decided against them.

2. Free supply of material by the service receiver to the provider should not be included in the value of taxable service

In case of ***CST vs. Bhayana builders private limited [CESTAT] 2018-TIOL-66-SC-ST,***question under consideration is "Whether the value of the material supplied by the recipient of the taxable service free of cost (hereinafter, for convenience referred to as "free supplies") should also be included, for availing the benefits under Notification No. 15/2004-ST, dated 10.09.2004 as amended by Notification No. 4/2005-ST dated 01.03.2005."

While dismissing the Revenue Appeal the Apex Court agrees with the decision pronounced by the Larger Bench of CESTAT in same case and held that

- *Service tax is payable on the gross amount charged. The words "gross amount" only refers to the entire contract value between the service provider and the service recipient. The word "gross" is only meant to indicate that it is the total amount charged without deduction of any expenses. Merely by use of the word "gross" the Department does not get any jurisdiction to go beyond the contract value to arrive at the value of taxable services. Further, by the use of the word "charged", it is clear that the same refers to the amount billed by the service provider to the service receiver. Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into the equation for determining the value on which service tax is payable.*

- *The amount charged should be for "for such service provided": Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value*

on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined.

3. **Whether Service Tax levied on renting of immovable property is within the power of central government.**

In case of Union of India & ORS Vs. UTV News Ltd, 2018-TIOL-124-SC-ST, *it is challenged whether service tax on renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce is within the legislative competence of the Union Parliament.*

The apex court held that Question is directly relatable to the scope and ambit of Entry 49 of List II of the Seventh Schedule to the Constitution of India dealing with "Taxes on lands and buildings". If the impost/levy is directly relatable to the lands/ buildings contemplated in Entry 49 of List II of the Seventh Schedule to the Constitution of India, Bench would have had no hesitation in saying that the Union Parliament would lack legislative competence to enact the particular provision in the Finance Act, 1994. However, Bench is unable to take the said view as has been advanced by the individual Assessees. However, the arguments advanced may indicate that even if there is no direct nexus there may be an indirect one. Whether such indirect connection or relation would be of any relevance to decide the issue of legislative competence appears to be pending before a nine judges Bench of this Court on a reference made in an order in ***Mineral Area Development Authority and others vs. Steel Authority of India and others (2011) 4 SCC 450*** *- Bench is, therefore, of the opinion that* ***these matters should await the decision of the nine judges Bench where after the hearing of these matters will be taken up once again*** *in the course of which it will be open for the parties to urge such additional points*

as may be considered relevant. Matter is accordingly deferred until disposal of the issues pending before the nine judges Bench in Mineral Area Development Authority and others (supra).

4. Different establishments located in non-taxable territory and taxableterritory are to be treated as establishment of different persons

In case of ***Holtec Asia Pvt LtdVs Commissioner Of Central Excise, Gst Pune-I 2018-TIOL-1888-CESTAT-MUM*****, appellantfiled refund claims under Rule 5 of CCR, 2004 read with Rule 6A of the Service Tax rules, 1994 in terms of Notification No. 27/2012 CE (NT) dated. 18.06.2012 towards Cenvat Credit paid on input services used in providing output services.**The adjudicating authority has refused to allow the refund claim on the ground that in terms of provisions of Rule 2 (i) of PPS Rules the location of the service recipient automatically becomes the 'premises for which service tax registration" is obtained and once the recipient is not located outside India, the vital condition of the Rule 6 A (1) of service tax rules is not satisfied.

CESTAT held that they were not in agreement of such interpretation made by the lower authorities. The place of provision of service rules cannot be applied to the refund being claimed in terms of Rule 5 of Cenvat Credit Rules and to interpret the export of service. In the present case the services were rendered to service recipient who is located outside India. The Indian Project office of M/s Holtech International Ltd, USA was not at all concerned with such services. Further in terms of Explanation 3 to Section 65B (44) different establishment located in non-taxable territory and taxable territory are to be treated as establishment of different persons.It is thus clear that the office of M/s Holtech International situated in USA is different establishment from its project office in India. In the present case it is the US establishment of M/s Holtech International, USA who has availed the services from the Appellant and therefore the services rendered by Appellant would clearly fall under the category of Export of Service in terms of Rule 6A of Service Tax Rules, thereby making them eligible for refund claimed by them.

5. **The conversation of jumbo rolls of paper into napkins, face tissues, M-fold/C-fold tissues etc., by the process of cutting, slitting, folding and packing amount to manufacture.**

In case of *S R Protus Hygiene P Ltd Vs Cce-Delhi-Ii, 2018-VIL-429-CESTAT-DEL-CE,*question under consideration is whether duty paid jumbo rolls of tissue paper and cut and slit the same to smaller sizes of required dimensions – whether the conversation of jumbo rolls of paper into napkins, face tissues, M-fold/C-fold tissues etc., by the process of cutting, slitting, folding and packing amount to manufacture.

CESTAT held that raw materials procured by the appellant are in the form of jumbo rolls. Such jumbo rolls cannot be conveniently and efficiently used either as a tissue paper, napkin, toilet roll, kitchen roll etc. The processes undertaken in the appellant's factory involve slitting the jumbo rolls and cutting to required size, folding them and packing them. These processes bring into existence various products which are in a form suitable for convenient use for various applications - The jumbo rolls which are raw materials for the appellant are completely transformed into the form in which it can be conveniently used and are marketed. There is no doubt that the final products of the appellant are perceived in the market place as different from the jumbo rolls which are raw materials. No doubt both the jumbo rolls and final products such as napkins are made of the same tissue paper. But the transformation of jumbo rolls into either toilet rolls/ kitchen rolls or in the form paper napkins bring out a distinctive and different use in the article. Evidently, the resultant products are perceived differently in the market. Consequently, the process undertaken by the appellant is to be considered as a process of manufacture. In the peculiar facts and circumstances of the case the demand is upheld even on the basis of extended time limit. The impugned order is upheld and the appeals are rejected.

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INDIA & FOREIGN DIRECT INVESTMENT (FDI)

- Mr. RAMASAMY

Intro

FDI can take place in the form of establishing new business operations from scratch or acquiring existing business assets in the other country. FDI includes mergers and acquisitions, building new facilities, expansion of existing production capacity, etc., FDI usually involves control/participation in management, joint-venture, management expertise and technology transfer. It excludes investment through purchase of securities or portfolio foreign investment, a passive investment in the securities of another country e.g. shares and bonds.

FDI Investment Routes

Foreign Direct Investment (FDI) can be made through two routes that are:

1. ***Automatic Route:*** *Indian companies engaged in various industries can issue shares to foreign investors up to 100% of their paid-up capital in Indian companies*
2. ***Government Approval Route:*** *Certain activities that are not covered under the automatic route require prior Government approval for FDIs.*
   - ***Category 1 -*** *Sectors in which FDI is permitted up to 100% under automatic Route*
   - ***Category 2 -*** *Sectors in which FDI is permitted up to 100% under Government Route*
   - ***Category 3 -*** *Sectors in which FDI is permitted beyond certain limit with Government*
   - ***Category 4 -*** *Sectors wherein FDI is permitted up to certain limit under both Government and Automatic routes subject to applicable laws/ regulations security and other conditionalities*

Recent History of FDI in India

Financial Year	FDI Yearly Inflows $ Billion	FDI Cumulative Inflows $ Billion	FDI Equity Yearly Inflows $ Billion	FDI Equity Cumulative Inflows $ Billion	FDI Other Yearly Inflows $ Billion	FDI Other Cumulative Inflows $ Billion
2010-11	34.80	**151.55**	21.38	**103.22**	13.42	**48.33**
2011-12	46.50		35.12		11.38	
2012-13	34.20		22.42		11.78	
2013-14	36.05		24.30		11.75	
2014-15	45.15	**222.79**	30.93	**158.41**	14.22	**64.38**
2015-16	55.60		40.00		15.60	
2016-17	60.08		43.48		16.60	
2017-18	61.96		44.00		17.96	

1$ Billion = INR 6,700 Crores (100 Crores @ INR 67/$)

Need for Foreign Direct Investment

*Foreign investments including Foreign Direct Investment (**FDI**) are considered crucial for India as it needs around $1 trillion for overhauling its infrastructure sector such as ports, airports and highways to boost growth. Strong inflow of foreign investments mainly helps to improve the country's Balance of Payments (BoP) situation and also strengthen the rupee value against other global currencies, especially dominant US dollar.*

*The economic development witnessed during the past two decades in India, rests to a great extent on Foreign Direct Investment (FDI). FDI has been a vital non-debt financial force behind the economic upsurge in India. Prime Minister Narendra Modi came to power in May 2014 and since then he has taken a number of measures to attract **FDI**to the country.The ability to attract large scale **FDI** into India has been a key driver for policy making by the Government.*

*To attract inflow of **FDI**, the central government has created conducive trade atmosphere and alsoannounced several measures including liberalization of **FDI** policy and improvement in business climate. The government is focused on "removing roadblocks" to foreign investment in order to facilitate faster development of the economy. Increased **FDI** inflows in the country are largely attributed to intense and bold policy reforms it (government) undertook to bring pragmatism in the FDI regime.*

*In the last four years, the government has liberalized **FDI** norms in sectors such as rail infrastructure, defense, medical devices, construction development, retail and civil aviation. The main sectors that received maximum foreign inflows include services, computer software and hardware, telecommunications, construction, trading and automobile.*

*There are several benefits of increasing **FDI** in India. First of all, with more **FDI**, consumers will be able to save 5 to 10 percent on their expenses because products will be available at much less rates and to top it all, the quality will be better as well. In short, it will be a win-win situation for the buyers. It is also expected that the farmers who face a lot of economic problems will also get better payment for their produce. This is a major benefit considering how many farmers have been giving up their lives lately. It is expected that their earnings will increase by 10 to 30 percent.*

__FDI__ is also supposed to have a positive effect on the employment scenario by generating approximately 4 million job opportunities. Areas like logistics will be benefited as well because of __FDI__ and it is assumed that 6 million jobs will be created. The governments – both central and state – will be benefited because of __FDI__. An addition of 25-30 billion dollars to the national treasury is also expected. This is a substantial amount and can really play a major role in the development of Indian economy in the long term.

Contributories to the FDI Inflow

Singapore, Japan, Mauritius, Netherlands, US, Germany, France and UAE account for the major share of FDI inflows into India.

Reform Measures:

- *100% FDI in retail trading of food products,including through e-commerce,in respect of food products manufactured and/or produced in India.This was introduced with an "unqualified condition that such food products have to be manufactured and/or produced in India."*

- *100% FDI in real estate broking services – clarified that real-estate broking service does not amount to real estate business*

- *Foreign airlines have been allowed to invest up to 49 per cent in Air India*

- *The threshold for FDI in existing Civil Aviation projects under the automatic routeincreased from 74% to 100%.*

- *100 % FDI under automatic route for Single Brand Retail Trading (SBRT). Sourcing norms earlier applicable for FDI were relaxed and will not be applicable up to 3 (three) years from commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible.*

- *Foreign Institutional Investors (FIIs) and foreign portfolio investors (FPIs) to invest in power exchanges through the primary market as well*

- *Permission to issue Shares against non-cash consideration like pre-incorporation expenses and import of machinery without requiring government approval for sectors under the automatic route.*

- ***Abolition** of the **FIPB** (the erstwhile government body authorized to approve proposals for FDI requiring government approval); and the **introduction** of the 'Foreign Investment Facilitation Portal' (**FIFP**), an administrative body to facilitate FDI applicants.*

- *Successful implementation of the e-filing and online processing of FDI application by the Foreign Investment Promotion Board (FIPB)*

- *Department of Industrial Policy and Promotion (DIPP) will process applications under the automatic route in cases where the investment is from a so-called country's of concern&issue security clearance for such FDI proposals, earlier dealt with by the Ministry of Home Affairs.*

- *Sector-specific administrative ministry/department listed as 'Competent Authorities' empowered to grant government approval for FDI which includes the Department of Industrial Policy and Promotion (DIPP) in respect of applications for FDI in the Single Brand, Multi Brand and Food Product retail trading and the Department of Economic Affairs of India for FDI in the financial services sector.*

- *FDI investors can ask for the audit of an investee company by a particular auditor or audit firm having an international network. In such cases there will be a joint audit where one of the auditors is not part of the network sought by the FDI investors.*

- *FDI policy for pharmaceuticals was amended to stipulate that the definition of a medical device would be that included in the policy. This was earlier subject to any amendment of the definition in the Drugs and Cosmetics Act.*

- *Introduction of 'Standard Operating Procedure' (**SOP**) to process FDI proposals which details the procedure and timeline for applications as well as the list of 'competent authorities' for processing government approvals for FDI in India.*

- *Consultation with the DIPP has been made strictly need based, leading to a more streamlined procedure and expeditious timeline (maximum time of 10 weeks) for approval.*

- *An LLP, operating in sectors/activities where 100% FDI is allowed under the automatic route (without FDI-linked performance conditions), is permitted to convert into a company. Similarly, conversion of a company into an LLP is also now permitted under the automatic route.*

- *Approval to issue (a) 'Convertible Notes' (instruments representing debt repayable at the option of the holder, or convertible into equity shares within 5 years from issue) by Start-ups to persons resident outside India; and (b) equity or equity linked / debt instruments by Start-ups to Foreign Venture Capital Investors.*

- *Previously applicable capitalization norms for non-banking financial services companies struck-off, and all financial sector activities by entities already regulated by financial sector regulators fall under the 100% automatic route of investment, with applicability of sectoral laws.*

Investments

- *In February 2018**, Ikea** announced its plans to invest up to Rs 4,000 crore (US$ 612 million) in the state of Maharashtra to set up multi-format stores and experience centres.*

- *In November 2017, **39 MoUs** were signed for investment of Rs 4,000-5,000 crore (US$ 612-765 million) in the state of North-East region of India.*

- *In December 2017, the Department of Industrial Policy and Promotion (DIPP) approved FDI proposals of **Damro Furniture** and **Super Infotech Solutions** in retail sector, while Department of Economic Affairs, Ministry of Finance approved two FDI proposals worth Rs 532 crore (US$ 81.4 million).*

- *The Department of Economic Affairs, Government of India, closed three foreign direct investment (FDI) proposals leading to a total foreign investment worth Rs 24.56 crore (US$ 3.80 million) in October 2017.*

- *Singapore's* ***Temasek*** *will acquire a 16 per cent stake worth Rs 1,000 crore (US$ 156.16 million) in Bengaluru based private healthcare network* ***Manipal Hospitals*** *which runs a hospital chain of around 5,000 beds.*

- *France-based energy firm,* ***Engie SA*** *and Dubai-based private equity (PE) firm* ***Abraaj Group*** *have entered into a partnership for setting up a wind power platform in India.*

- *US-based footwear company,* ***Skechers****, is planning to add 400-500 more exclusive outlets in India over the next five years and also to launch its apparel and accessories collection in India.*

- *The government has approved five Foreign Direct Investment (FDI) proposals from* ***Oppo Mobiles India, Louis Vuitton Malletier, Chumbak Design, Daniel Wellington AB*** *and* ***Actoserba Active Wholesale Pvt Ltd.,*** *according to Department of Industrial Policy and Promotion (DIPP).*

- ***Walmart India Pvt Ltd.,*** *the Indian arm of the largest global retailer, is planning to set up 30 new stores in India over the coming three years.*

- *US-based ecommerce giant,* ***Amazon****, has invested about US$ 1 billion in its Indian arm so far in 2017, taking its total investment in its business in India to US$ 2.7 billion.*

- *Kathmandu based conglomerate,* ***CG Group*** *is looking to invest Rs 1,000 crore (US$ 155.97 million) in India by 2020 in its food and beverage business, stated Mr Varun Choudhary, Executive Director, CG Corp Global.*

- ***International Finance Corporation (IFC)****, the investment arm of the World Bank Group, is planning to invest about US$ 6 billion through 2022 in several sustainable and renewable energy programmes in India.*

- ***SAIC Motor Corporation*** *is planning to enter India's automobile market and begin operations in 2019 by setting up a fully-owned car manufacturing facility in India.*

- ***SoftBank*** *is planning to invest its new US$ 100 billion technology fund in market leaders in each market segment in India as it is seeks to begin its third round of investments.*

EXCEL TIPS

LOOKUP Function

CA DUNGAR CHAND U JAIN

Microsoft Excel LOOKUP function returns a value from a range (one row or one column) or from an array.

LOOKUP function is a built-in function in Excel that is categorized as a *Lookup / Reference Function*. It can be used as a worksheet function in Excel. As a worksheet function, the LOOKUP function can be entered as part of a formula in a cell of a worksheet.

There are 2 different syntaxes for the LOOKUP function:

LOOKUP Function (Syntax #1)

In Syntax #1, the LOOKUP function searches for value in the *lookup_range* and returns the value in the *result_range* that is in the same position.

The syntax for the LOOKUP function in Microsoft Excel is:

LOOKUP(value, lookup_range, [result_range])

Parameters or Arguments

value

The value to search for in the *lookup_range*.

lookup_range

A single row or single column of data that is sorted in ascending order. The LOOKUP function searches for value in this range.

result_range

Optional. It is a single row or single column of data that is the same size as the *lookup_range*. The LOOKUP function searches for the value in the *lookup_range* and returns the value from the same position in the *result_range*. If this parameter is omitted, it will return the first column of data.

Returns

The LOOKUP function returns any data type such as a string, numeric, date, etc.

If the LOOKUP function cannot find an exact match, it chooses the largest value in the *lookup_range* that is less than or equal to the *value*.

If the *value* is smaller than all of the values in the *lookup_range*, then the LOOKUP function returns #N/A.

If the values in the *LOOKUP_range* are not sorted in ascending order, the LOOKUP function will return the incorrect value.

	A	B	C	D
1	Empl ID	Name	Designation	Appraisal Score
2	1011	Bahubali	General Manager	9
3	1013	Devasena	Asst. Manager	7
4	1014	Bhallaldeva	Deputy Manager	8
5	1015	Sivagami	Supervisor	9
6	1018	Kattappa	Foreman	10
7				
8			Formula Used	Result
9			=LOOKUP(1015, A1:A6, B1:B6)	Sivagami
10			=LOOKUP(1015, A1:A6)	1015
11			=LOOKUP(1025, A1:A6, B1:B6)	Kattappa
12			=LOOKUP(1010, A1:A6, B1:B6)	#N/A
13			=LOOKUP(1012, A1:A6, B1:B6)	Bahubali

LOOKUP Function (Syntax #2)

In Syntax #2, the LOOKUP function searches for the value in the first row or column of the array and returns the corresponding value in the last row or column of the array.

The syntax for the LOOKUP function in Microsoft Excel is:

LOOKUP(value, array)

Parameters or Arguments

value

The value to search for in the array. The values must be in ascending order.

array

An array of values that contains both the values to search for and return.

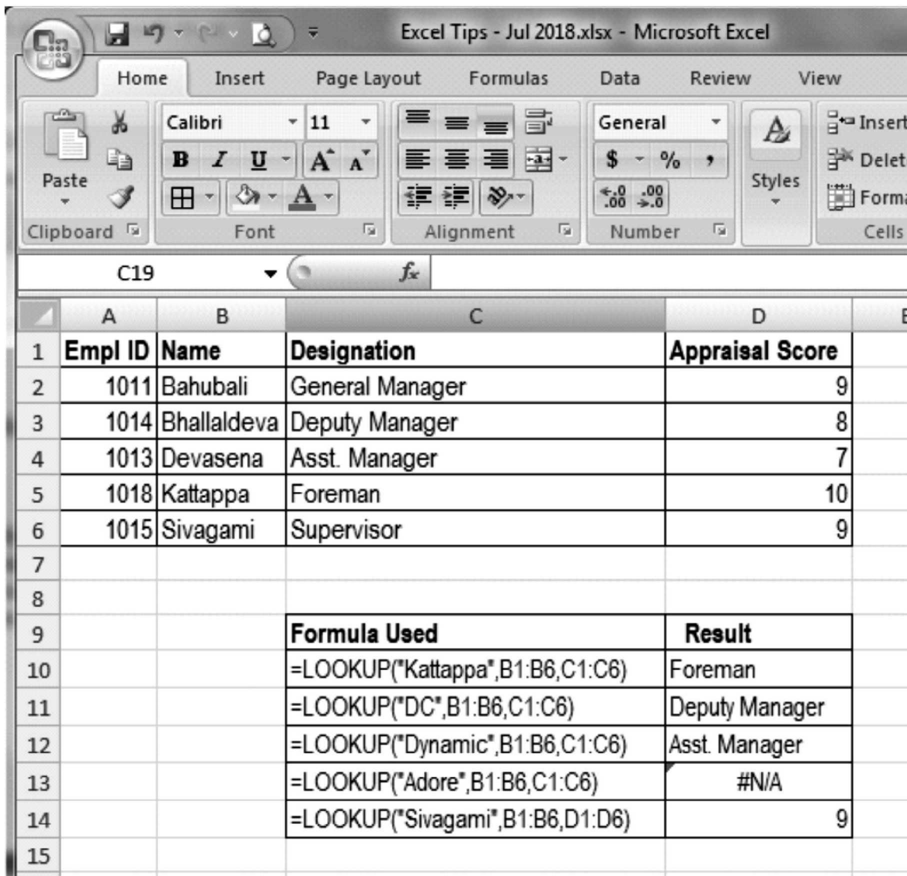
Returns

The LOOKUP function returns any datatype such as a string, numeric, date, etc.

If the LOOKUP function can not find an exact match, it chooses the largest value in the *lookup_range* that is less than or equal to the *value*.

If the *value* is smaller than all of the values in the *lookup_range*, then the LOOKUP function will return #N/A.

If the values in the *array* are not sorted in ascending order, the LOOKUP function will return the incorrect value.



Empl ID	Name	Designation	Appraisal Score
1011	Bahubali	General Manager	9
1014	Bhallaldeva	Deputy Manager	8
1013	Devasena	Asst. Manager	7
1018	Kattappa	Foreman	10
1015	Sivagami	Supervisor	9

Formula Used	Result
=LOOKUP("Kattappa",B1:B6,C1:C6)	Foreman
=LOOKUP("DC",B1:B6,C1:C6)	Deputy Manager
=LOOKUP("Dynamic",B1:B6,C1:C6)	Asst. Manager
=LOOKUP("Adore",B1:B6,C1:C6)	#N/A
=LOOKUP("Sivagami",B1:B6,D1:D6)	9

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